RETURN OF ALIEN PROPERTY

HEARINGS

BEFORE

THE COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTIETH CONGRESS

FIRST SESSION

ON

H. R. 7201

AN ACT TO PROVIDE FOR THE SETTLEMENT OF CERTAIN CLAIMS OF AMERICAN NATIONALS AGAINST GERMANY AND OF GERMAN NATIONALS AGAINST THE UNITED STATES, FOR THE ULTIMATE RETURN OF ALL PROPERTY OF GERMAN NATIONALS HELD BY THE ALIEN PROPERTY CUSTODIAN, AND FOR THE EQUITABLE APPORTIONMENT AMONG ALL CLAIMANTS OF CERTAIN AVAILABLE FUNDS

JANUARY 23, 24, 25, AND 26, 1928

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CONTENTS

Statement of—	Page
Armstrong, W. Campbell	33
Bissell, H. W	139
Boles, E. H	134
Bonynge, Hon. Robert W	233
Cherrington, E. N	25
Hays, Arthur G	42
Hoffstot, F. N	103
Howell, Senator Robert B	248
Humphreys, Adrian C	28
Hunt, Edgar W	67
Le Fevre, Charles H	64
Lafferty, A. W	46
McGowan, Lewis A	94
Mondell, F. W	3
Ottinger, Nathan	124
Owen, Hon. Robert L	152
Parker, Hon. Edwin B	191, 201, 221
Robert, Capt. W. P	175
Sidley, William P	20
Stickney, Albert	105
Sutherland, Hon. Howard	252


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RETURN OF ALIEN PROPERTY

MONDAY, JANUARY 23, 1928

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to call, at 10 o'clock a. m. in room 312, Senate Office Building, Senator Reed Smoot presiding.

Present: Senators Smoot (chairman), McLean, Curtis, Watson, Reed of Pennsylvania, Shortridge, Edge, Couzens, Fess, Greene, Deneen, Thomas, Gerry, Harrison, King, Bayard, Walsh of Massachusetts, and Barkley.

The CHAIRMAN. If the committee will come to order, we will begin the hearings.

I want to say to those who are present that at the last meeting of the committee, at which it was decided to hold hearings upon the alien property bill, it was agreed by the committee unanimously that as far as possible we would have to limit the hearings in this way, that there might be a number present who are interested in the same question. If that be so, we ask those that are interested in any particular question to get together and decide upon some one to speak for them.

This is done, of course, to hasten the matter, and in conformity with the notice that was given to the press. So, whenever there is a question to be discussed, I would like to have those present who are interested in that particular subject to rise, and if they can agree upon somebody to present the question, the committee would very much like to have it done as quickly as possible.

Senator HARRISON. It may be that the American claimants and the German claimants have already selected some one to speak for them.

The CHAIRMAN. More than likely they have, after seeing the public notice, and that is what we are going to find out.

Senator CURTIS. It was suggested to me that one or two members of the House would be very glad, if the committee desired, to appear before our committee at the proper time and explain why they prepared the bill in the way they did. The chairman of the committee, or Mr. Garner, or both, might be called. I believe it would be a good plan to have them do so. There might be some feature of the bill that they could explain and let us understand why they prepared it as they did.

The CHAIRMAN. I do not suppose they would care to be present while the hearings are on?

Senator CURTIS. No. I just wanted to make that suggestion so that you might consider it. That is all.

The CHAIRMAN. I have not undertaken to keep a list of all those who have made a request for hearing.

Senator KING. If there are any who want to speak for the German claimants, let the representatives of those who belong to the same group see if they can not select a representative to speak for them.

The CHAIRMAN. I wonder if there is a representative here for the German claimants?

Mr. MONDELL. Mr. Chairman, if it please the committee, I should like to have an opportunity to appear on behalf of the German claimants. I do not pretend to represent them all, but I have talked with some others who represent claimants who are agreeable to my appearing for those they represent, particularly with regard to the amount of the German property that is to be retained and the amount that is to be returned.

The CHAIRMAN. The percentage?

Mr. MONDELL. Yes.

The CHAIRMAN. I would like to ask if Doctor Kiesselbach is present.

Mr. MONDELL. I talked with Doctor Kiesselbach on Saturday. He told me that he doubted if he would be here this morning, and that it was not his purpose to appear before the committee unless the committee desired his attendance. I told him that I expected to discuss the subject that I have just referred to. It seemed to be entirely satisfactory from his standpoint.

Senator KING. There was an agreement entered into at one time between the American claimants and the German claimants which was put into the record of the last hearing of the House and, I think, went into our hearings here. Do you speak for those groups who signed that agreement and authorized its being signed?

Mr. MONDELL. I was not personally present at the meeting at which that was done. Doctor Kiesselbach was, and I have seen that agreement.

Mr. SIDLEY. If I may answer that question, Senator, I was the one who signed that on behalf of the American claimants.

Mr. MONDELL. The people whom I represent all agree to that plan and arrangement.

The CHAIRMAN. Mr. Sidley, are you appearing at this hearing to represent the American claimants?

Mr. SIDLEY. Yes, Mr. Chairman.

The CHAIRMAN. Then I think perhaps, Mr. Mondell, you might proceed at this time. I would like to say that we hope to get through with these hearings by to-morrow afternoon if possible, and we would like very much to have the statements just as concise and brief as is possible.

Mr. LAFFERTY. If it please the committee, I would like to observe at this time that for several years I have been working on this matter and have prepared several briefs on the subject, and I represent quite a number of German claimants who knew nothing about the supposed Kiesselbach-Sidley agreement and who do not agree to the terms thereof.

Senator KING. I suppose you will be heard after these others.

Mr. LAFFERTY. I wish to be heard, if the committee sees fit to hear me, before the hearing is closed.

Mr. HUNT. There are three groups of ship owners, represented by Mr. Katz, Mr. Devoe, and myself. We can agree among ourselves as to which one shall speak, and we would like, if the committee please, to be permitted to speak for the shipowners.

The CHAIRMAN. They have selected you to speak for them?

Mr. HUNT. Probably they will; yes.

The CHAIRMAN. Very well.

You may proceed, Mr. Mondell.

STATEMENT OF F. W. MONDELL ON BEHALF OF GERMAN CLAIMANTS

Mr. MONDELL. Mr. Chairman and members of the Committee on Finance, I appear on behalf of a considerable number of those owners whose property is in the hands of the Alien Property Custodian and in the so-called unallocated interest fund in the Treasury.

Senator KING. Do you represent any American claimants?

Mr. MONDELL. I do not. I represent only the so-called German owners, although there are quite a number of them who as heirs are not Germans. They are Canadians or other nonenemy people.

So far as I know, all of the people that I represent have approved of the agreement which was reached with the House committee, and so far as I know, the major portion of the German claimants have agreed to that settlement.

As it is the desire of the committee that those appearing before the committee should confine their remarks to certain definite and specific provisions of the bill, I shall confine my remarks, with the permission of the committee, in the main, at least, to the percentage of the German properties and claims to be retained temporarily, and the amount and percentage of those properties to be returned or paid at an early date.

I assume that the question of the wisdom and propriety and justice of the return of the German property is not under consideration at this time, as this bill is predicated on the theory that the property is to be returned, as has been all of the legislation that has been considered by either the House or the Senate on this subject.

Senator REED. Is this bill the same as the bill that came from the House last year?

Mr. MONDELL. This bill is the same as the bill that came from the House last year with the exception of, I think, six amendments which were referred to as clarifying amendments, placed on by the House committee. Four of them, I think, were taken from the Senate report on the bill last year, and three amendments also referred to as clarifying amendments adopted on the floor of the House.

There is no change in the major provisions of the bill. The major provisions of the bill remain as they were in the bill as it was before the Senate last year.

May I recall to the minds of the Senators what those major provisions are. There were three major problems to be settled: The question of the payment to American claimants, the awards of the Mixed Claims Commission, was one.

Second, the determination of the amount due the German ship patent and radio station owners and the manner in which payment is to be made of the amounts found due.

Third, the question of the return of the German property in the hands of the Alien Property Custodian and in the Treasury, known as the unallocated interest fund.

Those three questions are not necessarily related, perhaps, but they become related closely in the consideration of these matters; and the House committee, both in the original Mills bill and in the two bills which have passed the House since, have endeavored to make a compromise settlement as between the owners and claimants under these three general propositions. The measure before you is that compromise; a compromise under which German property owners agree that 20 per cent of their property in the hands of the Alien Property Custodian and all of their interest in the unallocated interest fund, amounting to $25,000,000, in the hands of the Secretary of the Treasury shall be retained temporarily; under which the German ship owners agree that they shall receive, in the first instance, after the award of the arbiter has been made, 50 per cent of the amounts due them, and that in the meantime 50 per cent of the appropriations made to meet the sums found due them shall be utilized with the 20 per cent of retained German property, with the unallocated interest fund, with the payments heretofore made as Dawes annuities, as a fund out of which the American claimants are to be paid. These sums are reserved or withheld for the purpose of expediting the payment of American claims.

Senator BAYARD. Then, to a certain extent, you, representing claimants other than ship owners, are interested in the award for the ships?

Senator KING. The bigger the award to them the more you will get?

Mr. MONDELL. The more rapidly will the property be returned. However, the amount of the appropriation made by the Congress, in the first instance, to pay for ships, 50 per cent of which goes into the deposit fund does not necessarily depend upon the amount which the arbiter may eventually decide the ships are worth.

Senator KING. If it is $100,000,000 to be given, your clients would get a great deal more than if only $50,000,000 were paid for the ships; that is, at least, immediately?

Mr. MONDELL. No German claimant whose property is in the hands of the Alien Property Custodian or in the hands of the Treasury is in any wise interested in the amount that shall be paid for ships except that if the amount paid for ships or appropriated for ships in the first instance were too low, then there might be temptation to retain a larger proportion of the German property. But in the long run, it makes no difference to them at all. Their only interest is as to the effect it might have on the first appropriation made on account of the ships, and that first appropriation might not be affected at all by the fact as to the amount which the arbiter finally found the ships were worth.

Senator BAYARD. Would your argument then be based upon the rough figure of $100,000,000 for the ships?

Mr. MONDELL. Senator, if you will allow me, I will develop that in just a moment.

When the bill was before the Senate last year, a bill similar as to the important features to the present bill, the suggestion was made before this committee that the plan adopted as to retention of properties and of payments was not altogether fair to the American claimants, even on the basis of the theory on which the plan was set up. Attention was called to the fact that while the bill proposes the return, so soon as that can be done, under the provision of the bill requiring an application and the consideration of that application. 80 per cent of the German property, the theory being that the return would be accomplished within a comparatively short time, yet, on the other hand, the 80 per cent of American claims given a preferred status as to payment would not all be paid under the provisions of the bill for several years; that there was a thin edge or wedge of that 80 per cent amounting to about $8,000,000, the last of which might not be paid for about five years.

I think that the impression that the settlement made by the House was not entirely fair to the American claimants grew out of the fact that it was based on a consideration of only two of the five or six major controlling factors of the situation. Of course, we should not lose sight of the fact that the American claimants were represented by good attorneys, men who thoroughly understood the workings of the plan, and they accepted and approved the settlement made as being entirely satisfactory to the American claimants. But quite outside of that acceptance and approval by the representatives of the American claimants, I think the plan is fair and just and equitable from all viewpoints, assuming, as we must assume in the consideration of this bill, that it is proper to retain for a time a portion of the property of German citizens in the hands of the Alien Property Custodian and in the Treasury, and to delay payment of a portion of the claims of German citizens for ships and radio stations, and to use the sums thus temporarily retained to expedite the payment of American claims.

The CHAIRMAN. Mr. Mondell, right there I desire to know if you want to make any objections to retaining the 40 per cent instead of 20 per cent of the German property as provided for in the bill that was reported to the Senate last year.

Mr. MONDELL. I have a very decided objection to it, Mr. Chairman. I am endeavoring to point out to the committee why, in my opinion, the so-called 20–80 provisions are equitable, wise, and just; and the statement just made by the chairman illustrates, I think, the reasons why some came to that opinion that the plan was not entirely equitable, because in the general statement of the plan the only features of the compromise referred to was the return of 80 per cent of the German property in the hands of the Alien Property Custodian and the payment of 80 per cent of American claims, and it was said that the 80 per cent of the German property may be returned at an earlier date than the last of the 80 per cent of the preferred American claims are paid.

Senator KING. As a matter of fact, if you will pardon the interruption, the United States got nothing until all the others were paid. It might be 40 years or 60 years.

Mr. MONDELL. After I conclude my statement with regard to this matter, if the committee would care to have my comments as to the propriety of deferring the Government payments, I shall be very glad to give them very briefly.

Senator KING. The propositions you have been laying down are based upon the theory that the Government of the United States shall receive no payment until all the others are paid?

Mr. MONDELL. Yes, sir; the theory of the House bill and the theory which, as I understand it, was finally agreed to by the Senate committee——

Senator HARRISON. After the Senate took the action it did, of changing from the 80 to the 60 per cent, etc., did the representatives of the American claimants and the representatives of the German claimants have any other meeting with reference to that matter, and did the representatives of the American claimants then approve the change in the Senate bill, or did they adhere to the old agreement made by the House?

Mr. MONDELL. I know of no meeting at which all of the representatives of the two classes of owners and claimants were present, but I personally talked with all of the representatives of the American claims that I knew or met from time to time, and so far as I have heard, there were none of them but felt they were bound by the original agreement known as the 20–80, and I have met none of them that did not believe that that agreement was fair and reasonable and satisfactory to them.

Senator MCLEAN. Under that agreement it would be six years before they would get their money; under the Senate bill, only two years.

Mr. MONDELL. Under the set-up of last year it was indicated that it would be six years, and I think it would have been six years, because while only $8,000,000 of the 80 per cent would be unpaid at the end of the second year, that $8,000,000 would then be augmented by the interest on all of the retained property and claims, increasing it to something like $40,000,000, and then it would take a period of some five years, in the situation of last year, to pay the last thin edge of that 80 per cent which came in with the interest on all these other deferred payments.

But, Mr. Chairman, that brings me to this proposition. I think that most of us have failed to realize that there were many factors in this compromise agreement and that the one which has been used to label it, 20–80, if considered alone, does not give a fair idea of the compromise. Twenty per cent of the German property in the hands of the Alien Property Custodian is withheld. It is not to be repaid until it is repaid concurrently with the repayment or the payment of the last 20 per cent of the American claims. In addition to that 20 per cent of the German property in the hands of the Alien Property Custodian, all of the unallocated interest fund belonging to Germans is withheld—not 20 per cent of 40 or 60, but all of it.

Senator SHORTRIDGE. Amounting to approximately how much?

Mr. MONDELL. Amounting to approximately $25,000,000, or approximately 10 per cent of the German properties; and that 10 per cent so withheld is not to be repaid until all of the American claims have been paid with interest, after which it is to be returned to these owners some 20 or 25 years hence without interest.

This is a factor involving 10 per cent of the German property that has been entirely overlooked by those who have suggested that the arrangement was not fair. Further, it will be some time before any of the German ship or patent owners are paid, because

it will take some little time to set up the machinery and for the arbiter to reach a decision in those cases. When the decision is reached, those German ship owners receive not all of their awards, but 50 per cent of their awards. Fifty per cent of the sum appropriated to pay those awards, in the meantime, is to be used to expedite the payment of the American claims, so that the set-up is about like this, if I can make it clear:

Including the 20 per cent of alien property in the hands of the Alien Property Custodian retained, all of the unallocated interest retained and 50 per cent of the ship payments retained, approximately 35 per cent of all German properties and claims is retained.

Senator BAYARD. Does it not necessarily follow that the definite amount depends upon the amount of the ships?

Mr. MONDELL. I figured on that at length, and I find that so far as my percentage goes—I tried to arrive at a percentage because I supposed that question would be asked—I found it did not make a very great difference as a matter of percentage whether the Arbiter finally found the ships and patents were worth $60,000,000, $70,000,000, or $80,000,000.

Senator KING. Or $50,000,000?

Mr. MONDELL. The Navy award, with interest, amounts, as I understand it, to more than $50,000,000 for ships.

Senator KING. Approximately $50,000,000.

Mr. MONDELL. And then there are the patents, which I suppose have some value.

So we can not assume that in any event the awards of the Arbiter would be as low as fifty million; but make it sixty or seventy or eighty million, and still the percentage that I have just suggested remains approximately the same—33 to 36 per cent of the German property and the German claims are deferred or retained.

The CHAIRMAN. You refer particularly, now, to the interest being withheld and no interest allowed. I would like to say that before this hearing concludes there will be numerous representatives of those that are interested in the interest and who are going to demand of this committee that the interest be taken under consideration.

Mr. MONDELL. That is, the interest on the unallocated interest?

The CHAIRMAN. Yes.

Mr. MONDELL. Mr. Chairman, as you have mentioned that, I will say that I think that would be entirely fair to pay interest on that fund. I do not think it would take from my argument to do so; I am using the argument of the bill as it is now before you to emphasize how fair and how equitable it is in the treatment of the American citizen.

Senator REED. There are three classes of claims: Two kinds of German claims and one kind of American claims. When does the American Government begin to get paid, under the House bill, for its claims?

Mr. MONDELL. After all of the private claims have been paid and after all the German properties have been returned.

Senator REED. In other words, the American Government begins to be repaid about 1953. Is that right?

The CHAIRMAN. Not before that.

Senator KING. And that rests upon the continuation of the 2¼ per cent of the Dawes reparations.

Mr. MONDELL. I did not intend to discuss that question, but if the committee will bear with me for about three minutes, I would like to suggest some reasons why I think that is proper.

The CHAIRMAN. That is, the 25 years?

Mr. MONDELL. The deferring of the Government claim.

The CHAIRMAN. I would like to know what your reasons are.

Mr. MONDELL. There are some very good reasons for it, or the House committee would not have done it.

The CHAIRMAN. Is it not a fact that many American claimants feel that they are compelled to stand by the agreement that was reached, but think, however, that the 20 per cent is not sufficient?

Mr. MONDELL. If there are any American claimants that have expressed that sort of a view, none of them have expressed it to me. Their representatives have repeatedly said to me that they believed that the set-up of the House bill was fair and equitable and that they preferred there should be no change. What some one may say to some one else, I do not know; but these gentlemen have been very definite and very specific and quite earnest as they have talked with me in favor of it. They feel it would be very difficult to defend any radical change.

I shall not for the moment, at least, express my contention about the retention of the payment of American claims. Later, if the committee desires it, I will. I have just outlined the situation with regard to the German owners and the German claims, that the property return and claim payment is deferred to the extent not of 20 per cent, taking it all into consideration, but approximately 35 per cent.

How about the American claims?

Senator KING. May I interrupt you there? I apologize for so doing. Is it not a fact that the adherence of the American claimants to the agreement of December 1, 1926, signed by Mr. Sidley for the American claimants and Doctor Keisselbach for the American-German claimants, would give a little quicker payment to the American claimants than the Senate bill, and therefore they preferred the House bill to the Senate bill, preferring the 80–20 set-up instead of the 60–40 set-up?

Mr. MONDELL. The Senate bill as reported—that is, the 60–40—would expedite payment of American claims, the first payments, beyond question. They are expedited by the House bill, and I assume the Senate change was made with a view of expediting payment still more.

Senator KING. The American claimants would have a selfish interest in the Senate bill?

Mr. MONDELL. Their selfish interest would be in the Senate bill; and therefore I want to express my appreciation and approval of their attitude in this matter, so far as I know—the chairman shakes his head. Some one may take a different view; but so far as the representatives that I have met are concerned—and I have met most of them—they tell me that they not only approved that settlement then, but they approve it now, and they still believe it fair and they hope that it will be carried out.

If there are gentlemen who want to take a different view and express it before the committee, of course that is their affair. But that is what they have said to me.

May I come back, now. I have called attention to the 35 per cent retention of German property and German claims. What does the bill do with regard to American claims? It puts 80 per cent of the American claims in a preferred class.

There are 2,800 American claims. The first set-up of the fund out of which these claims will be met, if the Senate makes the same appropriation for ships that the House does, is $113,000,000. Out of that first set-up, all of which, with the exception of a small portion of Dawes annuities due in September next, could be set up within 10 days after this bill passes, there is no reason why the payment of the American claims should not begin within 10 days.

There is available in the Treasury $25,000,000 unallocated interest. There are available the Dawes payments already made. There is available 20 per cent of the German property, and the amount of American claims being known, payment could begin at once; and probably that would be the first thing done under the bill.

There are 2,800 American claims. Of those 2,800 American claims 2,622 will be paid at once. Ninety-four per cent of all American claims are paid out of the first set-up in full, with interest.

Senator EDGE. What does that amount to?

Mr. MONDELL. Approximately $34,000,000—$4,000,000 death and personal injury claims, and $29,000,000, as I recall it, of claims under $100,000. All of those are paid in toto with the interest due on them at once. That is, all claims are paid at once in full with interest but 178. That leaves, then, after this first payment, all of which could be made within, at the very outside, three or four months. I think there remains 178 claims still to be paid, some of which have not as yet been decided, as a matter of fact.

Senator EDGE. Right there: What happens to the claims before the Mixed Claims Commission that are not decided after this bill, should it pass, becomes a law.

Mr. MONDELL. The commission will go on with its business and decide those claims in due course.

Senator EDGE. Is it your understanding that this bill would permit them to do that and that the claims would be paid just in the same proportion as other claims when decided?

Mr. MONDELL. Beyond question.

Senator EDGE. Without limitation?

Mr. MONDELL. The claims now before the commission must all be settled, of course, the gentlemen who constitute the Mixed Claims Commission are here and will be heard, I assume on that.

Senator EDGE. No additional claims, then, could be filed?

Mr. MONDELL. As I recall it, no.

Senator EDGE. That is my understanding.

Mr. MONDELL. Mr. Chairman, not only are all the death and personal-injury claims paid out of this first set-up of the special-deposit fund at once, all awards up to and including $100,000, with interest, amounting to $29,000,000, are paid at once, but in addition to that there remains the sum of $78,000,000 in this first set-up of the special-deposit fund to be allocated among the remaining 178 claims; and if the payments were equal—they will not be, because thay are paid on percentage—if the paymenst were equal, it would amount to $440,000 on every one of those claims to be paid at once.

So that, as I said, 2,622 out of 2,800 American claimants will receive, under the provisions of the House bill, their money just as soon as the special-deposit fund can be set up; and it can be set up at once.

The remaining 178 claimants will receive amounts averaging $440,000. It will be much more than that to some of them; less to others.

It is true that there remains a thin edge of $8,000,000 of the 80 per cent of preferred American claims that are not paid either out of that first set-up or out of the next year's contributions to the fund. But it could be paid out of one year's return under the Dawes annuity on account of claims.

My own opinion is that those claims will be all paid the second or third year, because, if the Senators will note, the Alien Property Custodian gives as the amount of German property in his hands the sum of $245,000,000. Twenty per cent of that is $49,000,000.

In the set-up of the fund on page 24 of the House bill that 20 per cent is given as $40,000,000, I suppose, in order to be entirely conservative and with the idea that in the meantime there might be some withdrawals from the German funds in the Alien Property Custodian's office. But assuming that the Alien Property Custodian is correct in his estimate, then the first set-up of the special deposit fund should have as the 20 per cent of the German property temporarily retained not $40,000,000, but $49,000,000.

If that be true, then the $8,000,000 of the 80 per cent of preferred American claims which are somewhat delayed as to their thin edge by the fact that they are brought in with interest charges on deferred payments, would all be paid within two years, or three, at the outside from the time of the passage of the bill.

Senator REED. Will you permit an interruption?

Mr. MONDELL. Just a moment, Senator.

I think no one believes that the last of the 80 per cent of the German property is likely to be returned much prior to that date, although those two do not stand alone as controlling factors of the settlement. There is the other factor of unallocated interest fund retained for 20 years with or without interest, as your committee may determine—with interest, I trust—and the deferred payment on German ships.

The CHAIRMAN. The substance of what you say is this, that the House bill will hasten the payment of 20 per cent and defer the payment of 80 per cent of the American claims. That is the substance of it, is it not?

Mr. MONDELL. The House bill expedites and makes possible the payment of 80 per cent of the American claims.

The CHAIRMAN. When?

Mr. MONDELL. Well, 94 per cent of the American claims will be paid instanter, immediately, out of the first set up of the fund. The only remaining claims are the very, very large American claims, which are just as proper and just, I assume, as the small ones, but they are all very large, upon which there is also to be paid immediately out of the first set up of the fund an average of $440,000. All of that 80 per cent is paid within a year after the first payment except, possibly, $8,000,000. While that thin edge is waiting for the payment in that period, remember that the German owner of

the unallocated interest fund is waiting and will wait much longer; that the German ship owner is waiting and will wait longer, and that the German claimant is waiting for the return of his additiona 20 per cent.

Senator BARKLEY. Ninety-four per cent of the American claims of which you speak is 94 per cent of the number. What does that represent in the aggregate amount of the claims?

Mr. MONDELL. It represents about $33,000,000.

Senator EDGE. What percentage, I think the Senator wanted to know.

Mr. MONDELL. The American claims below $100,000 number 2,622. That would be 94 per cent.

Senator BARKLEY. What I am trying to find out is, what percentage would that represent of the aggregate American claims?

Mr. MONDELL. The aggregate is $187,000,000.

Senator BARKLEY. That is very much less than one-fourth in amount?

Mr. MONDELL. Yes; but I am speaking only of those claims involved in the first set-up of the bill. In addition to the $33,000,000 which wipes out all the claims under $100,000, $78,000,000 remains in that first set-up in the fund to be distributed among the remaining 178 claimants.

The CHAIRMAN. It represents between 55 and 60 per cent of the total amount?

Mr. MONDELL. That 113 represents about 60 per cent paid at once.

Senator REED. Let us see if we can not perhaps abbreviate this a little.

The House bill, as you interpret it, and the figures as you understand them, will result in immediate payment of that 94 per cent in number of American claims, but you believe from figures given you by the Alien Property Custodian that it will result in the complete payment of all the American private claims within the next three years, and in any event——

Mr. MONDELL. The House report gives five years as the date of this last payment on the preferred 80 per cent.

Senator REED. But you think that the amount immediately available will be greater than they figure on, and therefore will accelerate complete payment.

Mr. MONDELL. I do.

Senator REED. The American claimants, so far as I know, are satisfied to abide by that, and I do not believe that the committee had had any substantial protests from American claimants, even those whose payments will be deferred. We understand that the group of German claimants in the main is satisfied with the provision made for them, the private claimants; that the radio and patent and shipowners are reasonably well satisfied with what is done for them, and they want to see the House bill passed.

What a number of us are concerned about is the treatment that has been accorded the American Government in the appropriations for ships, for one thing, and in the deferring of the claims for the Army occupation, for another thing; and we understand, if our recollection of the House bill last year is right, that it means that the American Government will not receive either principal or interest on its established claims for Army of occupation expenses until 25 years shall

have elapsed. In other words, the United States Treasury holds the bag that makes this whole scheme possible.

Some of us would like to hear you on that.

Mr. MONDELL. Senator, I thin that this bill has nothing whatever to do with the Dawes annuities payable on account of the costs of the Army of occupation——

Senator REED. Assuming you are right.

Mr. MONDELL. The only Dawes payments we are dealing with is of the $10,700,000 per annum., payable out of the Dawes annuities on account of claims. The $13,000,000 payable annually out of those annuities on account of claims of the army of occupation, flows into the Treasury of the United States wholly unaffected by this measure. It does not touch it anywhere. That was one trouble with the Mills bill, that we were using the Army of occupation funds. This bill uses no penny of Treasury money, either first or last, except that it may be said that by utilizing for the expedition of American claims 50 per cent of the first appropriations on account of ships we are using on behalf of those claims temporarily the moneys which belong to other claimants.

Senator SHORTRIDGE. But, Mr. Mondell——

Mr. MONDELL. I would like to complete my statement on that, Senator. I think there can not be any misunderstanding about the Army of occupation fund. We take no penny of Army of occupation funds under this bill. We do not touch those funds. They continue to flow into the Treasury, $13,000,000 annually until the $250,000,000 is paid.

Now, with regard to deferring American Government claims——

Senator HARRISON. May I interrupt you, Mr. Mondell? What do the American claims that we are proposing to pay here consist of? As I understand it, there were claims for the insurance on ships that were sunk; that the Government insured ships for a large amount.

Mr. MONDELL. I intended to refer to that in answer to the Senator's question.

Senator GERRY. Can you tell us what amount of the number of claims from that fund have been settled?

Mr. MONDELL. Of the estimated total number of claims all except perhaps 20 or 25 have been settled.

Senator SHORTRIDGE. Mr. Mondell, is it not a fact that the claims of the Government as such are subordinated, deferred, so to speak, out of regard to the amount of German and American claims?

Mr. MONDELL. If I may address myself to that subject very briefly——

The CHAIRMAN. Did you answer Senator Gerry's question as to the amount of claims?

Senator GERRY. I think you gave the percentage of the claims and not the amount.

Mr. MONDELL. The representative of the Mixed Claims Commission can give you exact information as to the number of claims which have not been settled.

The CHAIRMAN. It amounts to $24,000,000 without interest.

Senator KING. When you used the word "settled" you simply meant adjudicated by the Mixed Claims Commission?

Mr. MONDELL. Yes. So far as the United States Government is concerned, both the Government and the people of the United States

are quite as well off under the provision of deferred Government payments as they would be if the payments were made promptly; they are rather better off, assuming that Germany shall continue to pay the Dawes plan awards, because the Government is to receive 5 per cent interest on those deferred payments, while Government bonds bear about 3 or 3½ per cent. The Government will make about 1½ per cent annually on those deferred payments. The Government is just as well off with those payments made 20 or 25 years from now as it would be if they were paid to-day. On the other hand, it is quite a different thing with an individual.

The CHAIRMAN. You do not think that the Government, if it desired money, could get money from any institution in the world on the basis of this 5 per cent? I mean if they had no more credit than they were going to receive on those deferred payments drawing 5 per cent, you do not think anybody would pay them the full amount for those claims?

Mr. MONDELL. That depends upon what one's opinion is on the ability and desire of the German Government to pay.

The CHAIRMAN. And the German Government could carry out the Dawes plan?

Mr. MONDELL. A government carrying a great load of bonded indebtedness, as we are, and gradually paying it off loses nothing by the delay, but rather gains eventually, the delay in the payment of a sum due an individual is quite a different matter. It may bring him to absolute poverty or bankruptcy. His position is very different from that of a great government with its extended financial operations and with its magnificient credit. The individual can not afford to have his payments unduly delayed. Any delay in his payments would amount, in many cases, practically to confiscation, under a more euphonious term. That is the first consideration. Secondly, a very considerable proportion of these American Government claims do not represent an actual loss on the part of the Government. They are entirely proper and legitimate, legal claims against Germany; but of the $61,000,000 of American Government claims against Germany, $35,000,000 are on account of insurance under the theory of subrogation. They are sound, proper, legal and legitimate, as the obligation of Germany; but they do not represent actual losses on the part of the American Government, because the American Government made money on its insurance business.

Third, none of us have any disposition to criticize any administration, or any administrative officer, much less the Congress, for our failure to place before the Allies at a very early date our claims and our reasonable demands. On the other hand, after the close of the war we took the position, as I recall, that we demanded no reparations and expected no payments. We made no immediate definite demand on account of the costs of the American occupation; and even at a time when Germany was turning over in kind and in cash tremendous sums—running, as I recall it, well into the billions—England, Belgium, Italy, all of the nations having armies of occupation collected. We never made an effective effort to collect. We never suggested that it was due us.

Senator MCLEAN. Nevetheless, we agreed to pay them.

Mr. MONDELL. I do not say that in any spirit of criticism. I do not say it was not just the thing to do; I am simply reciting history.

The CHAIRMAN. Do you deny that there was an agreement between the United States and Germany that we would be paid before the army of occupation was finally decided upon as remaining in Germany?

Mr. MONDELL. Mr. Chairman, my understanding has always been that Germany was bound by the treaty of Versailles that all external payments that she should make of whatever kind or character, either in cash or in kind, were to be paid to and through the committee on reparations; and that Germany could not agree with us that we should have any definite or specific sum or amount. We must go to the committee on reparations to get our share. We did not approach that committee.

I think it is unquestionably true that Germany believed and understood that out of her first large payments after the signing of the armistice we were to be paid and were being paid. We were not paid.

Senator SHORTRIDGE. The treaty in terms included us?

Mr. MONDELL. It did and we made no effective demand at the only place where a demand could be made, to wit, the committee on reparations.

The CHAIRMAN. In the armistice treaty Germany agreed to paid and in the Versailles treaty Germany agreed to pay, and I can not see what argument there can be about it.

Mr. MONDELL. Germany did pay it.

Senator HARRISON. We had no representative there.

Mr. MONDELL. We had no representative there. We had no one there to suggest that a part of that money is ours.

Senator HARRISON. And the least we say about it the better.

Mr. MONDELL. I have never criticized that attitude. I think there was a fairly good reason for it.

Senator FESS. The army of occupation remained there at the suggestion of Germany, and why would not Germany be under obligation to pay?

Mr. MONDELL. She is under obligation to pay. No one questions that. The only discussion was as to the fact that we made no demand. Germany could not pay us anything. Germany could not pay a penny, and can not pay a penny to any one except as she pays it under the Dawes plan through the committee set up to receive it. The question of the amount that we receive rests not with Germany in any sense or in any way, but with our allies, what they are gracious enough to allow us to have out of the general pot, and we made no definite or effective demand for any part of these sums until after the Dawes plan was set up, when there was a rather interesting correspondence between our Secretary of State and the Foreign Office in London in regard to the matter. The suggestion from London was that we had said we were not going to ask for anything and this was rather a late hour to suggest that there were some payments due us. But at the meeting in Paris we finally did get the Allies to agree to give us a sum which amounts to $13,000,000 per annum on account of the costs of the army of occupation. Then, in addition to that, a sum equal to 2¼ per cent, but not to exceed a certain number of millions of gold marks on account of claims.

Senator KING. Forty-five million gold marks.

Mr. MONDELL. Forty-five million gold marks, amounting to $10,700,000 on account of claims. So that the fact that we have to retain German money and German properties and defer payments to German shipowners, in order to be fair with American claimants, is due to the fact that our Government made no effort in those early years to present its claims or to demand their payments, and that when we sat down with the Allies in Paris and demanded a fair proportion, both on account of the army of occupation and on account of claims, they gave us a rather small sum on account of claims and we accepted it. The Government accepted it, and I think, from the standpoint of those three propositions, as a matter of finance, it makes no difference to the American Government whether its payments are delayed—a large portion of the American Government claims is not based on an actual loss; the Government itself is responsible, without criticism, I think, for delay in urging its claims and for accepting a limited amount when the agreement was reached. I think it is quite fair and proper that the Government should have the return of its moneys delayed until after the other payments are made.

The CHAIRMAN. I would like the committee to know whether the recital made now by Mr. Mondell in relation to the action of our Government is a correct one or not. We have a representative here from the State Department, and I would like to ask him if the State Department understands the situation on the subject matter just discussed as now recited by Mr. Mondell.

Mr. PHOENIX. Of course, I have no authority to speak for the State Department, and I can only express my personal views.

The CHAIRMAN. You have been in the department.

Mr. PHOENIX. They are not in accord with Mr. Mondell's statement. My own personal recollections do not agree with what Mr. Mondell has just stated.

Senator. WATSON. What is your personal recollection?

Mr. PHOENIX. That the Government of the United States through an unofficial representative that was maintained with the Reparation Commission repeatedly reserved its every right in respect of Army costs and its ultimate participation in sums available for paying its share of the costs. Furthermore, long before the Dawes plan was put into effect an agreement was negotiated by the Treasury Department for the payment of Army costs. That never came into effect because it was not ratified by the French Government. When the Paris agreement was negotiated the provision which Mr. Mondell referred to took the place of the earlier Wadsworth agreement. But at no time was the right of the United States to have its Army costs paid lost sight of by any of the administrative departments of the Government.

Mr. MONDELL. The only difference between the statement that I made and the statement made by Mr. Phoenix is that there was another agreement that was never ratified that was somewhat different. As a matter of fact, we never lost sight of the fact that we had some sums due us. I have not suggested that that was not true. As a matter of demanding payments and securing results, what I have said was true.

The CHAIRMAN. Were not the payments made by our Government?

Mr. PHOENIX. Mr. Borden, when he was our unofficial representative, filed a reservation.

Mr. MONDELL. A formal representation was filed—Mr. Phoenix is much more familiar than I am with the correspondence between the Secretary of State and the English Foreign Office—when we made definite our suggestion just before the Paris meeting, the London Foreign Office rather took the position that we made no demands; but, of course, I do not think anyone forgot that the army of occupation cost us a lot of money and that we hoped some time to get it back, although we never definitely, specifically, emphatically, and successfully established that claim until we got to Paris, and then we received on account of that claim $13,000,000 annually, and they were good enough to say then that, "It is true, you unquestionably are entitled to your army of occupation costs," without interest, by the way, and then after some haggling we got 2¼ per cent on account of claims. So that the Government is responsible for the settlements that were made. The Government would lose nothing by having its payments deferred, unless Germany fails in her obligations. The Government earns a cent and a half per annum in interest on these deferred payments.

Senator HARRISON. Mr. Mondell, you said that about 50 per cent of the American Government claims was for insurance?

Mr. MONDELL. $35,000,000.

Senator HARRISON. The whole thing was about $60,000,000?

Mr. MONDELL. $61,000,000.

Senator HARRISON. What was the difference?

Mr. MONDELL. About $22,000,000, as I recall it, was on account of losses by the Shipping Board and about a couple of millions I think I saw tabulated as railroad losses, possibly losses on some roads that we had constructed in France.

Senator HARRISON. What do Shipping Board losses mean?

Mr. MONDELL. Ship and cargo losses.

Senator HARRISON. Did we not have them insured?

Mr. MONDELL. No; we only insured private cargoes. They were insured by the Veterans' Bureau.

Senator HARRISON. The War Risk Insurance Bureau?

Mr. MONDELL. Yes.

Senator HARRISON. Do you recall the profit we did make out of war-risk insurance?

Mr. MONDELL. I would not want to say. At different times various statements have been made in regard to it. At one time I heard the statement made that we had made $7,000,000 or $8,000,000, but I rather doubted if that included all charges that should properly have been made. However, assuming that it did, we made quite a sum. At any rate, we know that we did not lose on the war-risk insurance, and $35,000,000, principal and interest, $24,000,000 principal and the balance interest, of the American Government claims are war-risk claims, under the theory of subrogation.

Senator SHORTRIDGE. Do you understand, Mr. Mondell, that the treaty or the agreement ratified at Paris, spoken of as the Paris Agreement, could be modified without our consent?

Mr. MONDELL. No; I should say that having entered into that agreement with the representatives of the Allies it could not be modified without our consent.

Senator SHORTRIDGE. If, however, others should claim the right to change that agreement to our disadvantage, to what funds could we have recourse?

Mr. MONDELL. No one could change that agreement, Senator, to our disadvantage unless we agreed to it. It could not be changed.

Senator SHORTRIDGE. Legally and properly I suppose it could not be.

Mr. MONDELL. I can not see how under any circumstances any effort would be made to change it. It is notoriously a comparatively small proportion.

Senator SHORTRIDGE. Too small, in my judgment.

Mr. MONDELL. Certainly the Allies would not without our consent make any change.

Senator EDGE. But if Germany should cease payment we would have no other recourse?

Mr. MONDELL. That is true, but I assume that no one proposes to retain the German property for payment of American Government claims, particularly that class of Government claims that do not represent any losses.

Mr. Chairman, the only argument that can possibly be made for the retention of a larger percentage of the German property in the hands of the Alien Property Custodian is an argument on behalf of the 178 large claims, most of them claims running from half a million up into the millions.

Senator EDGE. Of those not to be adjudicated?

Mr. MONDELL. Yes; some of which are small and some of which may be quite large.

Senator KING. And the Government claim of $65,000,000.

The CHAIRMAN. On the other hand, some of the German claims are very large, are they not?

Mr. MONDELL. I am not in anywise suggesting that those claims are not entitled to full consideration because they are large. I think, of course, legislate on the basis of the awards of the Mixed Claims Commission on the theory that those awards are legal and lawul and just and equitable. Personally, that is my opinion.

The fact is, however, that the committee of the House and the committee of the Senate have felt that it was perfectly proper to differentiate as between certain classes of claims and to give the death and personal injury claims preference and to give all claims under $100,000 preference. That is another $29,000,000. And to give in connection with those payments a preferential status to 80 per cent of the American claims in all.

The only argument that can be made for a retention of the larger proportion of the German property in the hands of the Alien Property Custodian is that these larger claims should be paid more rapidly after each of them has received what amounts to about $440,000 from the first set-up of the fund. I do not understand that the claimants themselves are asking that that be done. I understand that they are perfectly satisfied with the agreement which was made and the arrangements which were entered into and the plan as set up by the House, as to the large claims; the last of the 80 per cent will

be paid within two to four years, depending upon whether I am right about the sum of the 20 per cent of retained German property—four years at the outside—and the remaining 20 per cent is to be paid concurrently, with interest, and concurrently with the return of the 20 per cent of retained German properties.

Senator KING. What would you do with those Germans who refused to consent to this agreement entered into by Doctor Kiesselbach and Mr. Sidley who say that they want all of the trust amount which is represented on the books of the Alien Property Custodian?

Mr. MONDELL. That is for the committee and for the Senate to say rather than for me to suggest.

Senator KING. The point I have in mind is this: You were assuming, of course, an assent by all of the Germans. You are assuming that they will accept this proposition. I was wondering if you thought of the possibility of some of them refusing to abide by the situation.

Mr. MONDELL. I know of none that I represent or that I have heard of who would not accept this agreement. May I say this with regard to this agreement: I understand, of course, that Congress is not absolutely bound by any understanding had. I have attempted to make it clear to the committee that quite outside of any agreement entered into, any acceptance on the part of the American claimants on the one hand and the German owners on the other, the arrangement is a fair and equitable one, assuming that we must make one side of these propositions wash the other, that we must reserve some property and defer the payment of some claims in order that we may return some property and that we may expedite the payment of the American claims.

Senator FESS. How many cases were settled under the Winslow bill?

Mr. MONDELL. All of the cases up to $10,000.

Senator FESS. There were a great many?

Mr. MONDELL. Yes.

Senator KING. Some of those have not yet applied to the Alien Property Custodian for the $10,000 under that bill.

Senator FESS. We recognize the principle of retaining some payment.

Senator KING. Moreover, the German Government has exercised its power of eminent domain. We are a bailee for the German Government, and we could not if we wanted to dispose of this property without the consent of the German Government; that is to say, we would subject ourselves to criticism if we should dissipate these funds or return these properties to the German nationals without the consent of the German Government. The German Government would say, "We refuse to pay you anything because we made you a bailee of this property."

Senator EDGE. But if the Mixed Claims Commission made a decision we could.

Mr. MONDELL. We must assume that Germany has made suitable provision in that she has made the only possible provision that she can make.

Senator KING. I do not agree with you there, Mr. Mondell.

Mr. MONDELL. The Senator must agree with me.

Senator KING. And the State Department did not agree because that very short note written by Mr. Kellogg repudiates the view which you have asserted.

Mr. MONDELL. Senator, of course, no one can claim that the German Government now or at any time since the signing of the armistice could have paid us a penny on account of war claims, except as she paid it through and we received it from the committee on reparations in the first instance and the committee acting under the Dawes plan now.

Senator EDGE. Disbursed by American citizens?

Mr. MONDELL. Yes. There is no other way in which Germany can make arrangement except to agree to pay all she can pay and then we take what our allies feel that they must give us.

Senator MCLEAN. But under the Berlin treaty unquestionably we have the right to hold a German property until Germany makes provisions for paying her claims to American nationals?

Mr. MONDELL. At the time the German treaty was signed we knew, as we know now, that the only suitable arrangement, or the only arrangement of any kind, that Germany could make was through those channels that were established by and under the treaty of Versailles, that she could not otherwise pay a penny to any one for any war claim, and that, therefore, when Germany agreed that she would pay all that the Dawes Commission said she could pay, and we accepted a percentage of that, Germany had, so far as she could, made suitable provision; she had made the only provision that it was within her power to make.

Senator KING. May I interrupt you, Mr. Mondell? Are you quite accurate in that statement? Germany has already increased her taxes, or rather levied taxes and appropriated part of them to the payment of her nationals for properties which were seized by a foreign government and applied to the liquidation of claims against Germany.

Mr. MONDELL. Internal.

Senator KING. And I find in the report of the agent general for reparations of December 10, 1927, he challenges attention to the fact that in addition to these general payments in pensions the government of the Reich is advancing other measures; one a proposition to compensate nationals for loss or damage to private property during the war, and the other a general school law for the Reich.

Mr. MONDELL. Some proposed legislation not yet enacted.

Senator KING. But they have enacted some and paid some money to German nationals to compensate them for property which was taken by the Allies for liquidating claims against all German nationals.

Mr. MONDELL. As the Senator knows, they must have camouflaged it very adroitly, or the Committee on Reparations would have challenged it at once, because the provisions of the treaty of Versailles are very definite in that regard. I know that if Germany were to attempt to make any agreement with us with regard to the payments of these claims, she would be challenged at once.

Senator SHORTRIDGE. But she did enter into the Treaty of Berlin.

Mr. MONDELL. Yes.

Senator SHORTRIDGE. Could not Germany take on obligations over and beyond the obligations of the Versailles Treaty?

Mr. MONDELL. Not on account of the war in which we were a party, not on account of war losses, we were a participant in the war, although we did not sign the treaty of Versailles.

Senator SHORTRIDGE. We are entitled to all of the benefits of the treaty.

Mr. MONDELL. I understand. The treaty of Versailles very definitely limits the payments of Germany to that one channel, and none can be made in any other way.

Senator REED of Pennsylvania. She can not make external payments but she can make internal payments, and she agrees to do it

Mr. MONDELL. Yes.

Senator EDGE. Mr. Chairman, before the next witness is called I would like to ask if there is present a representative of another class of claims that we can probably consider before we pass on the bill, claims that are not yet adjudicated by the Mixed Claims Commission and which would be in jeopardy by the passing of this bill.

The CHAIRMAN. Mr. William P. Sidley, representing the American claimants is present. We would like to hear from you now, Mr. Sidley.

In answer to the question that was raised as to the number of claims of individuals or corporations settled completely under the Winslow bill, up to December 31, 1927, there were 23,440, and the amount paid was $53,447,515.74.

STATEMENT OF WILLIAM P. SIDLEY, CHAIRMAN OF THE AMERICAN WAR CLAIMS ASSOCIATION

The CHAIRMAN. Will you give your full name for the record, Mr. Sidley?

Mr. SIDLEY. William P. Sidley.

The CHAIRMAN. Whom do you represent?

Mr. SIDLEY. I am acting as chairman of the American War Claims Association and have been for some years.

Senator WALSH of Massachusetts. Does Mr. Sidley appear in favor of the bill or opposed to the bill?

Mr. SIDLEY. I appear in favor of it, Senator.

Senator WALSH of Massachusetts. Why should not we assume that this bill has favorable support of the people whom Mr. Sidley represents?

The CHAIRMAN. Mr. Sidley will be as brief as possible.

Mr. SIDLEY. I really am here in response to a request of the chairman for information as to the American claims that our committee represents and what their attitude is upon the House measure as now under consideration.

As the name indicates, our American War Claims Association is made up of a very large number of those who have claims against Germany in connection with the war.

Senator HARRISON. What percentage of the claimants do you represent?

Mr. SIDLEY. I would say 50 per cent of all, or perhaps more than that; but, in view of the turn that things have taken, it seems to me that the important consideration with you gentlemen would be to what extent we represent the larger claimants.

We represent, I should say, about 700 of the small claimants.

Senator KING. Out of 2,600.

Mr. SIDLEY. Yes; out of 2,600. So far as they are concerned, they are taken care of by the bill. They do not need any looking after because the House has looked after them very effectively, and I understand that this committee is in sympathy with the feature of the House bill which provides for payment in full of all death claims and claims under $100,000, and there was no opposition among the larger claimants to that provision. It seemed to be a proper and equitable one. So that while a very large amount of the claims will not be taken care of in full, I say they fall necessarily into rather a few hands.

Senator KING. May I interrupt you, Mr. Sidley? It has been stated here in reply to a question by one of the Senators that there are claims now pending before the Mixed Claims Commission which will probably receive adjudication to the extent of $25,000,000 plus. Do you represent any of those claimants?

Mr. SIDLEY. No; I do not. Mr. Greene's report indicated that there were 162 awards of over $100,000, and he sets down here 16 estimated not to be allowed. I do not know how accurate that estimate is.

The CHAIRMAN. There are about 200 claims not yet finally consummated, and they amount to about $20,000,000.

Mr. SIDLEY. Well, our estimates here are a little different from Mr. Greene's, but I think they are fairly accurate. There is not such a difference as to be material.

We have in our membership of these larger claims which will be deferred into the 80 per cent and other classes 86 claimants, whose total claims, principal and interest, aggregate $92,446,000. Then, there are 22 nonmembers whom we have approached within the last few weeks to ascertain their views. For one reason or another they have not continued their membership, but in order to get them on record we have interviewed them personally.

Senator KING. Most of them are corporations?

Mr. SIDLEY. A large number are corporations.

Senator KING. What is their aggregate?

Mr. SIDLEY. There are 22 nonmembers who approve the position which we have taken in favoring this House bill, and that leaves on our check-up 44, and this 22, by the way, represent in round numbers $32,000,000 of claims. That makes a total of $124,000,000 for whom we feel we can speak on this occasion. Then, there are 44 whose claims have been allowed, over $100,000, for whom we can not speak. We could not find most of them. A few of them whom we approached objected to certain features of the bill. One or two, I think, did not like the attorneys' fees provision and the assignments. We had no dissents from any of these larger numbers. Now, these 44 for whom we do not speak represent $10,000,000 of the claims. This is principal and interest. That is as we have figured it.

Senator KING. To date?

Mr. SIDLEY. To date. That represents 152, and Mr. Greene's figures were 162. I understand that there have been some awards made since his figures were obtained—that two of the larger claims were split into a number which reduced the number below $100,000.

I think, however, we can say with confidence that we speak now

for something over 90 per cent of the larger claimants who are the ones interested in these deferred provisions of the bill.

Senator WATSON. And they are satisfied with this House bill?

Mr. SIDLEY. They are satisfied to go ahead and they desire to have the approval of the House bill.

Senator WATSON. Then, are you here to object to other features of the bill?

Mr. SIDLEY. No, sir; I am not here to object to other features of the bill. I am here to explain why it is that we would not want to go in and ask for a larger award for the German property. There has been a suggestion of 40 per cent instead of 20 per cent. Some people have asked why we do not come in and insist that there be 40 instead of 20, because obviously we would be benefited by it. Our answer to that is that under the insistence of the committee of the House, and in view generally of the situation which existed, it became necessary for us to enter into an understanding with the German interests in order to get some kind of a bill through. The vital thing to us is to get a bill. The most unhappy thing would be a deferment of the bill beyond this session. It was said to us by the Committee on Ways and Means that, "You and these Germans try to get together on some compromise and see if you can not get a basis upon which we can act," and it was suggested by Mr. Green at the time that, "Possibly if you could get 75 per cent of your claims now and the Germans 75 per cent of the property, and defer the balance, that might be a basis."

Consequently, we had a meeting of our committee and conferred with our people as far as we could and concluded that we could make some substantial concessions in order to get some kind of a bill through. We met the Germans, Doctor Kiesselbach and Doctor von Lewinsky, and they assured us they did represent substantially all of the interests which had to do with the alien property fund and that they also spoke for the shipowners, and they were prepared to make very substantial concessions; not what we would like—the bill is not what we wanted to begin with—but they offered this 20 per cent retention of the alien-property fund. They offered to throw in all of the unallocated interests. They offered this 50 per cent of the ship money, which looked like a considerable concession, and we concluded upon that basis we would report to Mr. Green that we would support the bill on that basis.

Senator KING. To what extent would it dislocate the set-up, to use Mr. Mondell's expression, as provided in the House bill, if certain major amendments were offered, one providing that the Government of the United States would be put in the same category as the rest of the American claimants, and, secondly, that the amount to be allowed to the ships is $50,000,000 or thereabouts, and no more?

Mr. SIDLEY. Answering your second question first, Senator, when we entered into this arrangement——

Senator KING. I said ships. Add to that the patents and ships and radio.

Mr. SIDLEY. You understand that we did not at that time know what this ship money was going to amount to. We adopted that on principle, and in the House bill it is not stated; but it is said that it shall be a fair price. That is all we are asking for, so far as the American interests are concerned. Of course, if a larger allowance is made

the better pleased we would be, because it would mean more money for our payment.

To what extent it would upset the plan from the German standpoint, of course, I am not able to say. Your other question related to the introduction of the United States Government.

Senator KING. Putting it in the same category as the other American claimants.

Mr. SIDLEY. That would be a serious blow. The question has been asked, and Mr. Mondell has answered it pretty fully, what justification have we for postponing the Government in the manner in which the House bill does it. I do not undertake to supplement or add to his statement, except in one respect. I explained to this committee last January, when I was here before the committee on behalf of these claimants, my views upon this question of the Government's postponement; and, in a word, it is this; that the Government of the United States is in a far better position to stand a postponement than the American claimants are, for reasons which Mr. Mondell has sufficiently elucidated.

I am not so familiar as he with the amount of profits which it is said the Government made out of its shipping operations, but I understand that there was a substantial sum of money made in that connection. That has a moral and equitable bearing on the situation.

But I do feel when we come to the Paris conference matter, that there is a real reason why the United States should be just and generous and, you might say, do the gracious act of accepting postponement on its $50,000,000 or $60,000,000 of allowed claims before the commission in view of the fact that when it appeared at the Paris Conference it appeared in a double capacity, one being in its own private governmental capacity to recover money which the army of occupation had cost, amounting to $250,000,000, and the other in which it appeared as a trustee to represent the private Americans in this country who had no other representative except the United States Government to present their claims and to ask for relief and indemnity. And on that occasion, for reasons of state—I am not speaking in a critical spirit, but the fact remains—as Mr. Mondell would say, the historical fact is that the Government then preferred itself, to the extent of $250,000,000 of army of occupation costs, to its American cestui que trust, the private citizens whom it represented. It preferred itself by taking this first $250,000,000, by which it annually received 55,000,000 German marks. That provision is cumulative. If payment fails in any year, it is made up in the next. After the Government has been taken care of, it was then provided that the American private claimants come in with a meager 2¼ per cent of the remaining reparation amount available for distribution, which is not adequate to take care of all of them, and they take their turn next.

Now, what we think would be the gracious and the proper thing for the Government to do, in view of its ability to do so, is when it comes to this payment to these claimants to subordinate itself until these American claimants have had their share of the money. That is my view of the matter.

Senator KING. Of course, you are assuming the continuity of these payments?

Mr. SIDLEY. Yes; we are all doing that in setting up this bill.

The CHAIRMAN. In other words, you want the Government of the United States to do something that no other country did. The army of occupation costs of every government were a preferred claim, paid before any dollar was paid to any other claimant?

Mr. SIDLEY. The United States has set the example of doing things differently from other countries in connection with this war.

The CHAIRMAN. Do you think that America ought to be entirely different from any other country in the world as to its cost of occupation?

Mr. SIDLEY. No; I think the United States Government should receive its cost of occupation. It was the absolutely right thing for it to do.

The CHAIRMAN. Do you think that under the provisions of this bill they will receive it?

Mr. SIDLEY. The private claimants have nothing to do with that.

Senator REED of Pennsylvania. The bill does not affect that. Mr. Mondell corrected me. I had that same understanding.

Mr. SIDLEY. That does not enter into this residue. I am only talking of this 20 per cent residue which we will come into later and which the Senator suggested might be thrown into a common pot with the Government, and I am suggesting that this is a proper time for the Government to subordinate itself and allow the private claimants first to have their payments.

Senator KING. Mr. Chairman, I move that the committee adjourn until to-morrow morning at 10 o'clock, and that in the meantime those persons here representing the various claimants get together and allocate the time briefly, if they can.

The CHAIRMAN. Those who are present and want to be heard can see the secretary of the committee and ascertain if they can make arrangements to have one man speak upon any subject that they desire discussed.

Senator WALSH of Massachusetts. I can not see why those people who represent private claimants can not stand up and state whom they represent and then be dismissed. These other points that Senator King raises are very important ones and can be discussed by those who are familiar with them.

The CHAIRMAN. Between now and 2 o'clock this afternoon my secretary can get the names of all of these people who desire to be heard and ascertain the subjects that they want to discuss.

Senator HARRISON. Do you want to meet at 2 o'clock, Mr. Chairman?

The CHAIRMAN. I would like to meet at 2 o'clock.

Senator KING. Let us try to meet tomorrow and give them a chance this afternoon to see what they can do.

The CHAIRMAN. I want to say that if we can get through to-morrow I am perfectly willing to give to-morrow to this hearing, but I do not want this hearing to go longer than to-morrow. We have the appropriation bills coming in from the House and we want to dispose of them as they come over. Other matters, of course, are crowding in here.

Senator WALSH of Massachusetts. Are not a good many of these witnesses here simply to approve of this bill without any objection on the part of the parties whom they represent?

The CHAIRMAN. There are one or two who want a new principle entirely.

Senator WALSH of Massachusetts. They should be heard separately, but if a large number are going to testify to just what this last witness has testified to, I can not see any advantage in hearing them.

The CHAIRMAN. I will ask all those who are present and desire to be heard to rise in order that we may see how many there are. I wish that as soon as we recess for the noon luncheon you would go into the private office here and see just what subject you are going to speak on, and perhaps some of you are going to speak upon the same subject. If so, you can appoint somebody to speak upon that subject and we may be able to expedite the hearings.

Senator KING. And let them indicate the approximate amount of time they would like to have.

The CHAIRMAN. I am perfectly willing to adjourn now until to-morrow morning, provided we can close the hearings to-morrow.

Senator WATSON. We can not close them to-morrow, Mr. Chairman.

The CHAIRMAN. Then, the committee will stand adjourned until 2 o'clock this afternoon.

(Thereupon, at 11.50 o'clock a. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS

The committee met at 2 o'clock p. m., at the expiration of the recess.

The CHAIRMAN. The committee will come to order. Mr. Cherrington, we will hear you.

STATEMENT OF E. N. CHERRINGTON, ATTORNEY AT LAW, INVESTMENT BUILDING, WASHINGTON, D. C.

Mr. CHERRINGTON. Mr. Chairman and gentlemen of the committee, we have a comparatively minor proposition to offer in the way of a saving clause in respect to the property of certain Swiss corporations.

Senator KING. Mr. Cherrington, where do you live, whom do you represent, and what is your business?

Mr. CHERRINGTON. I am an attorney at law, in the Investment Building here in Washington.

Senator KING. In this city?

Mr. CHERRINGTON. Yes, sir.

The CHAIRMAN. Do you want any particular amendment to the House provision? In the House bill Swiss corporations are provided for the same as any other foreign corporation.

Mr. CHERRINGTON. Yes, sir; in the House bill they are provided for in the same manner that all corporations organised and existing under the laws of Germany are provided for.

The CHAIRMAN. Certainly.

Mr. CHERRINGTON. Which we respectfully but urgently contend is not justified by the treaty of Berlin, which is certainly the law under which this property is being retained; that is, any portion of it being retained.

The CHAIRMAN. You may proceed with your statement, just as briefly as possible, Mr. Cherrington.

Mr. CHERRINGTON. I might say that I represent the International Food Products Co., a corporation of Switzerland, organized in 1913. The reason I speak of that is because it was not organized after we went into the war or anything of that kind, I mean at a period to avoid sequestration.

Also I am speaking on behalf of Mr. Thomas Creighton, who represents the Swiss National Insurance Co., which is in the same position. The Swiss National Insurance Co. was organized in 1898.

The CHAIRMAN. Composed of all German stockholders?

Mr. CHERRINGTON. No, sir. Both of these corporations are, I might say, corporations whose shares of stock are purely bearer shares. That is, they pass from hand to hand over there in a different way from the most of our corporate shares in this country; they are not registered but simply pass, well, I will say, as a $10 bill would pass.

Senator KING. A good deal of the stock was held by Germans?

Mr. CHERRINGTON. A good deal of stock was held by Germans; yes.

Senator KING. Your position is that the corporations were, so to speak, juridical entities, and that we ought no to inquire as to whom the stockholders were or are, because, as you say, the stock passes from hand to hand, and the corporation not being organized in Germany, but organized in a neutral country, we should respect that juridical entity and not appropriate any of their property at all.

Mr. CHERRINGTON. Yes, sir. The Supreme Court of the United States since the passage of the act of 1917 has declared that the Alien Property Custodian in going behind the corporate entity and considering the ownership of the stock, is absolutely improper.

Senator KING. But the Supreme Court in that case said that if the corporation, notwithstanding its juridical entity, that is, accepting that view, that if it dealt with the enemy during the period of the war, then it was not within the purview of the treaty, and it was within the power of the Congress to legislate respecting that property, and to sequester and to hold it, and we are holding the residue of the property until Germany makes satisfactory arrangements for the satisfaction of the debts of American nationals.

Mr. CHERRINGTON. Exactly, and that is what this country protested against time and again before it went into the war in reference to what the Allies were doing with American property, neutral property, whether a corporation, an individual or a partnership. And we did the same thing with the Swiss corporations because they had the right to do business in Germany, and were not at war with Germany, and we had no international right to seize the property in the first place on that ground.

Senator KING. How many Swiss corporations are involved here?

Mr. CHERRINGTON. I understand that there are two.

Senator KING. Only two?

Mr. CHERRINGTON. Yes.

Senator KING. The correct amount is what as held by the Alien Property Custodian?

Mr. CHERRINGTON. About a million dollars, and under the present bill without this saving clause which we want, it would be about $200,000 that we would get; that is, the 20 per cent.

The CHAIRMAN. Have you the names of the companies involved in Switzerland, because last year, as I understood, there were four or five of them.

Senator KING. But Mr. Cherrington has only mentioned two, the International Food Products Co. and the Swiss National Insurance Co., represented by Mr. Thomas Creighton.

Mr. CHERRINGTON. Yes, sir.

Senator SHORTRIDGE. There are two Swiss companies whose property is now held by the Alien Property Custodian.

Mr. CHERRINGTON. There are these two Swiss corporations.

Senator KING. How many other corporations are there organized in neutral countries that might be involved here?

Mr. CHERRINGTON. I understand two or three, probably representing approximately a million dollars more. And to have our amendment adopted, to take them out of the category of German corporations, would be about $400,000 additional returned that would not be returned under the present bill, a comparatively negligible amount.

Senator KING. Senator Sutherland, would you be able to state how many companies were organized in neutral countries?

Alien Property Custodian SUTHERLAND. No, I could not state it off hand right here, Senator King, but I will get that information for you, if you desire it.

Senator KING. I thought you might have it. I wish you would furnish the number, and the countries in which organized, and the number of claimants, and the amounts. And if you have any information as to the distribution of the stock, as to how much were owned by German nationals and how much by the nationals of other countries, and how evidenced, and whether the stock is transferrable like money or whether it is transferred according to certain regulations of a different kind over there, and whether evidenced by certificates requiring endorsement on the books of the companies, and so on.

Alien Property Custodian SUTHERLAND. All right.

The CHAIRMAN. You may proceed, Mr. Cherrington.

Mr. CHERRINGTON. In 1920 Congress passed an amendment to the trading with the enemy act by which they authorized neutral individuals whose property had been seized because doing business with Germany during the war, and which they had a right to do, to be returned. But the corporations were not granted that relief. Now, the subsequent findings of the Supreme Court in that matter are set forth in the case of Behn, Meyer & Co. *v.* Miller, reported in 266 U. S., 463, in which the court said——

Senator KING (interposing). Might I interrupt you right there?

Mr. CHERRINGTON. Certainly.

Senator KING. Did not the Alien Property Custodian and the Congress differentiate between what might be called the interest of the stockholder and that of the corporation itself, the latter of which knowingly and willingly had dealings with the enemy during the war?

Mr. CHERRINGTON. That is true, and the only reason, or I mean the Government now admits that the only reason that the property of these Swiss corporations is held to-day, after the Supreme Court held that the ownership of the stock was not material, that the property belonged to the corporation itself and not to the stockholders, is that the Government now says: Well, nevertheless, they were doing business in Germany during the war, and according to the

original definition of enemy under the trading with the enemy act, there isn't any relief. But what we claim is that the fact that they were doing business in Germany during the war as neutrals does not justify the retention of their property indefinitely; that during the war that may have been justified in order to cripple German commerce, and so on, to take the property of neutrals who were doing business in Germany, but under the peace treaty it only authorizes retention of property of German nationals.

When we look at the law of our own land, and under the laws of Switzerland as well, this property is not the property of German nationals. It is the property of neutral corporations. And our own highest court has always maintained that proposition, and has in an alien property case held accordingly.

Senator SHORTRIDGE. You were about to read an excerpt from that case.

Mr. CHERRINGTON. The court said as to section 7, and that was the part of the act which authorized seizure—this was an answer to the Government's contention that it had the right to inquire into stock ownership:

> This section was never intended to empower the President to seize corporation property merely because of enemy stockholders interested therein.

In other words, it is treated throughout the act as a juridical entity in the same way as natural persons.

In this respect the Legation of Switzerland has entered a protest to the Department of State, which protest I understand is before your committee.

The CHAIRMAN. You take the same position now that was taken by these same companies at the hearings held a year ago.

Mr. CHERRINGTON. Yes; Mr. Chairman.

The CHAIRMAN. Very well. That was fully set out at that time, as you know.

Mr. CHERRINGTON. It is the same situation.

The CHAIRMAN. And the reasons why were then given.

Mr. CHERRINGTON. We feel that we are so right, not only legally but in a moral sense, that we wanted the privilege to present it again. I should like the opportunity to present Dr. Etienne Lardy, of the Swiss Legation, who is here, in case you want to ask him any questions.

The CHAIRMAN. Doctor Lardy was here a year ago; were you not, Doctor Lardy?

Doctor ETIENNE LARDY. No, sir.

The CHAIRMAN. But Mr. Cherrington has presented the case.

Doctor LARDY. Yes, sir.

The CHAIRMAN. Very well. Mr. Humphreys is next.

STATEMENT OF ADRIAN C. HUMPHREYS, REPRESENTING CHEMISCHE FABRIK VON HEYDEN, FARBENFABRIKEN VORMALS FREDERICK BAYER & CO.

The CHAIRMAN. Mr. Humphreys is interested in section 16 of the House bill. You may proceed.

Mr. HUMPHREYS. Mr. Chairman and gentlemen of the committee, I am the spokesman for a number of attorneys representing German

claimants who are particularly interested in one of the House amendments, section 16, subsection (b), found at the bottom of page 38 and top of page 39 of the bill, pertaining to income taxes.

The CHAIRMAN. It will be found on page 38, line 22, subsection (b).

Mr. HUMPHREYS. This section reads:

> In the case of income, war profits, excess profits, or estate taxes imposed by any act of Congress, the amount thereof shall be computed in the same manner as though the money or other property had not been seized by or paid to the Alien Property Custodian, and shall be paid as far as practicable in accordance with subsection (a) of this section.

Under this section all the income accruing to these trusts prior to their seizure, or while they were in the hands of the Alien Property Custodian, would be subject to tax. I do not believe that anyone would object to ordinary income of that character being subject to tax.

Senator KING. You mean subject to the regular corporation tax, the regular operating income?

Mr. HUMPHREYS. The assets——

Senator KING (interposing). Excuse me a moment, but are you referring now to an income tax that would have to be paid by the stockholders, or to the corporate tax imposed upon corporations?

Mr. HUMPHREYS. No. Of course, there were a great many German claimants owners of the capital stock of American companies, that American company or companies being a separate and distinct legal entity would pay their tax on their income. I am not referring to that at all, but am referring——

Senator KING (interposing). You are not complaining about that?

Mr. HUMPHREYS. No. Any income that accrued to these trusts, of any German claimants, is private income and should be taxed as such. And the estate taxes on the estates of a great many late German owners were properly levied is they died while the property was in the hands of the Alien Property Custodian. There is one class, however, against which very heavy imposts have been made, and this is that class which I wish to bring to your attention now: That is, the so-called capital gains, from the involuntary conversions of those properties into cash by the Alien Property Custodian. Out of some 23,000 trusts, according to one of the reports of the Alien Property Custodian, along about 22,000 of them were small ones, under $10,000 each, which went back without any impost charges whatever; but the heavy burden of this section will fall on probably 30 or 40 late German owners.

Senator SHORTRIDGE. That is a tax on capital gains?

Mr. HUMPHREYS. Yes. That is, where the Germans owned all the capital stock of the American corporation. The Alien Property Custodian seized that stock, and he sells it. On that involuntary transaction the Commissioner of Internal Revenue will compute the capital gain. The most of those sales were made in 1918 and 1919. If they are taxed under the rates in effect for those years the resulting tax will be from 50 to 60 per cent of the proceeds of sale in a great many cases.

Senator KING. But you think they ought not to pay because it was an involuntary sale so far as they were concerned?

Mr. HUMPHREYS. Yes; absolutely so.

Senator KING. But you do not mean to say that there ought to be any distinction between the German owner paying a tax and the American owner paying a tax?

Mr. HUMPHREYS. Oh, no.

Senator KING. But because the American owner voluntarily makes the sale he then is supposed to be willing to pay the tax, but if there is an involuntary sale made of the German owner's property, then you think he ought not be taxed thereon?

Mr. HUMPHREYS. Why, we do not tax our own people in that case. Then we only tax him 12½ per cent, and——

The CHAIRMAN (interposing). I will say for the benefit of the committee that the department has already suggested an amendment to these provisions.

Senator SHORTRIDGE. In order to meet this situation, Mr. Chairman?

The CHAIRMAN. Practically so, as I understand.

Senator KING. Going as far as counsel does in that matter?

The CHAIRMAN. I do not know as to that.

Senator REED of Pennsylvania. If the Alien Property Custodian had still held that property there would have been no such tax, you contend?

Mr. HUMPHREYS. Yes, sir.

Senator REED of Pennsylvania. And if he chose for his purpose to sell it it is not unfair to treat that as profit and, therefore, subject to income tax?

Mr. HUMPHREYS. Absolutely. But this seizure and sale was, to the Germans, a disaster, just as shipwreck, fire, or storm is a disaster to our citizens.

Senator KING. But under some circumstances it might not have been a disaster?

The CHAIRMAN. I will ask if subsection (b) in 203 of the income tax act of 1926 would be satisfactory to you and your interested parties.

Mr. HUMPHREYS. Let me see, and I think I have it here.

The CHAIRMAN. Paragraph 5 is as follows:

(5) If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the commissioner with the approval of the Secretary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

Mr. HUMPHREYS. That is the provision of the 1926 law. That is the replacement clause of the law that was first enacted in the 1921 act. It has been in substance reenacted in 1924 and 1926. The replacement section of the law followed the regulations promulgated by the Commissioner of Internal Revenue in April, 1918, about the time of the submarine warfare, when so many shipowners and others were suffering marine losses and they had to replace their insurance funds in other ships or other property. Where your property is totally destroyed and you receive the proceeds of the insurance policy and reinvest them, you do not add anything par-

ticularly to your great industrial conglomeration in the country. In a great many of these cases property has been seized and sold to Americans. If the German comes back now and attempts to reinvest he will either have to buy his own property back or build more. What that would mean economically to this country I do not know; what it would mean to industries that are overcrowded now, I do not know.

The CHAIRMAN. This provision would take care of the cases your refer to now, up to the present time?

Mr. HUMPHREYS. No; that would only permit him to replace this fund in this country. If he did not reinvest it in this country he would be compelled to pay taxes. He is in this position, in the case of your disaster, shipwreck, storm or fire, that much capital estate is destroyed and gone. But here for the German to come back he must either buy back his old property or go out and build more properties, and probably overcrowd some industries that we all know are overcrowded now. And as a general economic proposition to our country it might not be sound. But without some study I would not venture an opinion on that matter.

Senator KING. I am merely thinking out loud now, and I do not know whether it is fair or not, but let me ask you: Suppose there was an involuntary conversion of the property into cash and a profit was made, then that profit has an income imposed upon it, an income tax, and not a capital-gain tax.

Senator REED of Pennsylvania. That is what he objects to.

Senator KING. I did not know that he was objecting to a mere income tax.

Senator REED of Pennsylvania. This profit is subject to the normal and sur tax under the war time tax laws.

Mr. HUMPHREYS. If I might give you one example of that type, of how that imposes on it: There was a property that was sold by the Alien Property Custodian for $5,300,000. It had been capitalized at a nominal capitalization. At the time the Alien Property Custodian turned in to the Treasury $5,290,000, or something of that kind, as the net proceeds from that sale, and then the Bureau of Internal Revenue levied an assessment of $3,200,000 against it.

Senator KING. And collected that?

Mr. HUMPHREYS. Yes, sir.

Senator KING. And if this proposition went through, we would have to refund it to you?

Mr. HUMPHREYS. I maintain that here in this declaration of policy we say we merely hold the property the German owned in order to prevent him from aiding the Imperial German Government while it was at war with us. We say we are going to return this property, but then we convert it into cash and only reutrn 60 per cent of the owner's property.

The CHAIRMAN. You do not want him treated better than an American citizen?

Mr. HUMPHREYS. We do not treat the American citizen that way.

The CHAIRMAN. We make him pay the tax.

Mr. HUMPHREYS. You do not compel him to sell. There is certainly a decided moral difference between the position of the man who sells voluntarily and of the man who is forced to sell.

The CHAIRMAN. This provision is for the man who did not sell voluntarily.

Senator KING. What is the value of this property as of the date when the German owners purchased it?

Mr. HUMPHREYS. It had previously been held by a closely held partnership.

Senator KING. But what was its value when they acquired it?

Senator REED of Pennsylvania. They invented it and developed it. It is the patent on aspirin; is it not?

Mr. HUMPHREYS. Yes. It is an outstanding inequality. The inequality of the tax is the result of a mere accident, I think. For instance, if the property be sold in 1918 and 1919 it gets an impost of from 30 to 60 per cent. If by chance its liquidation drags out until 1924 and 1925 and results in a tax, it is subject to the tax rates as of that time.

Senator REED of Pennsylvania. How would your clients feel if we subjected them to a capital gain tax of 12½ per cent?

Mr. HUMPHREYS. I think that would be equitable. If every capital gain was subjected to one tax regardless of the year in which the sale was made, I think that would be equitable all round.

Senator MCLEAN. The profit was very large and it was the result of sales made in this country.

Mr. HUMPHREYS. I will come to that point: In the Bayer case, and I will take that, but there are perhaps half a dozen other examples, the sale price was $5,300,000. The last trial balance before the sale as determined by the Alien Property Custodian records, showed a surplus of over $2,000,000. That $2,000,000 represented earnings in this country, on which the excess-profits and war-profits taxes had been paid, and those earnings had been plowed back into raw materials, equipment, and machinery, and they are bound to be reflected in the sale price of $5,300,000. We are notified that they are going to tax it at war-profits rates on those earnings. And let us bury it in machinery and plant, and then they say they will tax it again when reflected in the sale price. So we are getting double taxation on practically every one of those properties that were the least bit prosperous and made very much money before they were sold.

Senator MCLEAN. And if a capital gain tax were levied, you think that would be about all that should be levied?

Mr. HUMPHREYS. Yes, sir.

The CHAIRMAN. Have you the amendment that you propose?

Mr. HUMPHREYS. I have the proposed amendment in my brief.

The CHAIRMAN. Is that all you have to present?

Mr. HUMPHREYS. There is one other section, Mr. Chairman. Some of these properties have been taxed as corporations when as a matter of fact they were individuals or partnerships. There are a number of details that the Alien Property Custodian would probably like to be relieved of after this property has been turned back. It has been suggested that the statute of limitations permitting the German owner to file claims within one year be embodied within the act.

The CHAIRMAN. A number have recommended that.

Mr. HUMPHREYS. I have embodied that in my brief.

Senator KING. Mr. Humphreys, if your proposition were accepted, it would mean an appropriation out of the Treasury of the United States of a good many millions of dollars, would it not?

Mr. HUMPHREYS. It is practically taking it out of one pocket and putting it into another, as I see it.

The CHAIRMAN. But it goes into an entirely different pocket.

Senator KING. How much would it be?

Mr. HUMPHREYS. I would say about $10,000,000. The Alien Property Custodian can probably answer that better than I can, but that would be my estimate.

Senator SHORTRIDGE. You are representing certain Swiss companies?

Mr. HUMPHREYS. No, I represent only German companies.

Senator SHORTRIDGE. But there are other companies affected by the same proposition?

Mr. HUMPHREYS. Oh, yes; it will affect all of them. And my clients being large corporations, they are affected more than the smaller ones.

The CHAIRMAN. I believe the total amount is $7,045,000.

Mr. HUMPHREYS. I will furnish the clerk with the amendment I suggest.

The CHAIRMAN. Very well. We will now hear Mr. Armstrong.

STATEMENT OF W. CAMPBELL ARMSTRONG, ATTORNEY AT LAW, 52 WILLIAM STREET, NEW YORK CITY

The CHAIRMAN. Gentlemen of the committee, Mr. Armstrong desires 15 minutes to speak on shipping claims.

Senator KING. On shipping claims entirely?

Mr. ARMSTRONG. Well, I should like to speak on two branches of the matter, Mr. Chairman.

Senator KING. I think he ought to have a full opportunity, Mr. Chairman.

The CHAIRMAN. You have 15 minutes, Mr. Armstrong.

Mr. ARMSTRONG. Mr. Chairman and gentlemen of the committee: Before I commence my statement, let me say that Senator King this morning called the attention of the committee to the report of the agent general for reparation payments, dated December 10, 1927, and referred to a letter which was written by Mr. Gilbert to the German Finance Minister in October, 1927.

In that letter, on page 198 of the report, he objected to a certain proposed bill, and if I may I will read two sentences from his letter to the German Finance Minister:

> The draft law for indemnifying German nationals for property lost abroad, apparently contemplates expenditures of about 1,000,000,000 reichsmarks; but the draft law has not yet been presented to the Reichstag and it is not clear what means of financing are to be adopted or how far the Budget is to be burdened with the proposed payments.

Senator KING. That is about $250,000,000.

Mr. ARMSTRONG. Yes, sir.

Senator KING. For one year.

Mr. ARMSTRONG. Yes, sir. Now, in answering, that German Finance Minister, in a letter which was dated November 5, 1927, said the Government of Germany intended to proceed with the enact-

ment of this law. Of course, it is a long letter, but the paragraph relative to this law, which is called "the war damage law," appears on page 222 of Mr. Gilbert's report, and there the Finance Minister said:

> In connection with the final war damage law, no undue claims are to be made either on the capital market or on the taxpayer. Only in so far as the proposed use of certain assets of the Reich—i. e., primarily the interest on and proceeds of the sale of the preference shares of the German Railway Co.—is not sufficient for the purpose, will a call be made on current budget funds for the balance * * *.

In other words, he says that they intend to go on with the law. And then he makes a statement which it seems to me is a matter of importance. It is the first declaration that I have seen since the bills have been considered, of the intention of the German Government to compensate their people.

Senator SHORTRIDGE. They propose to reimburse their own nationals for property used by other countries under the Versailles treaty?

Mr. ARMSTRONG. Yes, sir. He contends that such use by allied countries was in effect confiscation, because Germany could not reimburse its nationals, being alleged to be a bank apt country. The Finance Minister said:

> The bill itself is a consequence of the measures taken by Germany's former enemies and of the provisions of the treaty of Versailles. Article 297 (i) required Germany to indemnify her own nationals on account of these measures and in this manner the liquidating countries were released from the obligation to pay compensation.

He, therefore, says, as I understand it, that the German Government now contemplates, and as I understand the evidence before this committee and the House committee, it is that they have paid between $75,000,000 and $125,000,000. The amount seized by the Allied Governments was over $2,000,000,000. Doctor Kiesselbach, who testified here last year, said he himself had some property in England, and I think he said he got 4½ per cent back. But the German Government said to the House committee, in a letter which was presented t the State Department and which appears in Senate Document 191 of the last session of Congress, that the law then existing was the final law, that Germany could not make any further payments to persons whose property had been taken, on account of the Dawes plan, that owing to Germany's condition all money would go to the Allied and associated governments.

But you can see that the position of the German Government has now changed, and that they propose under this law, within the next year, to pay 1,000,000,000 gold marks to persons whose property has been taken, in addition to what has been paid heretofore.

I have not read all of this, but they do say that this will be the final payment, that they will never pay any more. They will pay a billion gold marks, and that is in addition is what they have paid already. If that is all they pay it will be 1,250,000,000 gold marks, and would represent about 15 cents on the dollar of the property seized in associated and allied countries.

Senator KING. I do not see how the value of the seizures could amount to what you have stated. We seized in the United States between $700,000,000 and $800,000,000. But much of it is out of our hands now, some of it belonging to nonenemy nationals and

much of it to neutrals, and so we have only got about $300,000,000 left. And my understanding was that Germany's investments in the United States were greater than in any other country unless possibly Great Britain and her colonies. So that I do not see that the aggregate amount of the investments could have been as much as you have indicated.

Mr. ARMSTRONG. I base my statement on the testimony of Doctor Kiesselbach, and I find in the hearings before this committee last year, January, 1927, on page 369, it was testified that the allied governments used $2,618,000,000 of property seized from the Germans.

Senator SHORTRIDGE. The allied governments, it stated?

Mr. ARMSTRONG. Yes, sir.

Senator REED of Pennsylvania. All governments.

Mr. ARMSTRONG. That does not include the amount we have taken. We took, I think, about $600,000,000 worth of property, and about $350,000,000 has been returned under different laws that have been passed, so that there is only about $250,000,000 to be disposed of now.

My suggestion is, and I have only a very short time left and will make it brief: In the House of Representatives the statement was made that the purpose of this bill was to place Germans and Americans on as nearly an equal basis as possible. It seems to me that the Germans have been given preferential treatment, of course inadvertently, bur undoubtedly it seems to me they have had preferential treatment.

On analyzing the House bill you will find, as was stated this morning, that the United States Government receives nothing on its award of $40,000,000. And you will remember that Mr. Bonynge testified last year what that award was, and he told you that $18,000,000 represents losses of ships and the other $22,000,000 represents insurance. Now, in addition to that there are 178 Americans—and this is repetition but I will go on as quickly as I can—who will get only 54 cents on the dollar. Those are Americans with awards of over $100,000. Of course, I am aware of the fact that the attorney for some of the claimants, who appeared before you this morning, stated that the American claimants are perfectly satisfied with this arrangement. But he also told you that Chairman Green, of the Ways and Means Committee of the House, as your record shows, stated at the termination of the hearings last year, that unless there was some arrangement by which Germans and Americans were treated equally he did not think anything would be passed and the Americans would not get anything. It is true that they will only get 54 cents on the dollar.

Senator REED of Pennsylvania. Altogether?

Mr. ARMSTRONG. At the present time, this year. Of course the Germans get their 80 per cent at once, and of course they have already received something under the Winslow Act, and $54,000,000 was that. If this bill is passed they will receive 84 cents on the dollar, those we are dealing with, while our people will get 54 cents on the dollar. Under the proposed bill, the Americans will get their 80 cents in five or six years, but that is entirely dependent, not on the $8,000,000 that Mr. Mondell spoke of this morning, but on a second appropriation being made for the ships.

If you will look at the report of the House committee——

The CHAIRMAN (interposing). Before you go into that, let me ask: You have reference to only 162 claims.

Mr. ARMSTRONG. Yes, sir; but as to the number——

The CHAIRMAN. The bill provides for the payment of all but 162 claims.

Mr. ARMSTRONG. Well, I am probably mistaken, Senator Smoot, if that is right. I thought it was 178 in this last bill.

The CHAIRMAN. But that does not make any difference.

Mr. ARMSTRONG. No; I find it is 178, on page 24 of Mr. Green's report, in the table. It is a small number. If you will look at this page 24 of the report of the House committee you will see, as Mr. Mondell said, there will be $113,000,000 available immediately for the payment of these various categories of claims. But, then, you will find a little below the center of the page that there is an additional appropriation for ships, radio stations, etc., of $25,000,000.

Senator KING. Aside from the $50,000,000?

Mr. ARMSTRONG. Of the original appropriation of $50,000,000, of which 50 per cent is to be used to pay Americans, and this is another.

Senator KING. That calls for $75,000,000?

Senator REED of Pennsylvania. No; for $100,000,000.

Senator KING. It is $50,000,000 and then $25,000,000.

Senator REED of Pennsylvania. No, not at all. It contemplates an immediate appropriation of $50,000,000, of which half goes into this pot. And then about two-thirds of the way down the page it contemplates a second appropriation of $50,000,000, of which one-half goes into the pot. That is where they get $8,000,000 balance to be paid. If the ships are not appraised by the arbitrator at $100,000,000, the balance to be paid to American claimants will be increased 50 per cent of the shortage.

Mr. ARMSTRONG. Yes.

Senator REED of Pennsylvania. In other words, if the ships are valued at $60,000,000 there will be $28,000,000, interest $8,000,000 to pay at that time.

Mr. ARMSTRONG. So that unless a second appropriation of $50,000,000 is made prior to 1929, which is of course next year, these American claimants are not going to get their 80 cents on the dollar within the time estimated in this bill, which is five years. We do not know how long it will be before they will get their 80 per cent, but it certainly will not be within the five years laid down here.

Senator REED of Pennsylvania. Do you represent some claimants of that class?

Mr. ARMSTRONG. I do not.

Senator HARRISON. Whom do you represent?

Mr. ARMSTRONG. I do not represent anyone. I did represent American claimants last year. I no longer represent those gentlemen, because I am no longer with the firm of which I was formerly a partner. I venture to take your time because I did spend a great deal of time during prior years on this matter, and I felt that possibly what I knew would be of value to the committee. I hope it will be, and I am agreeing to try to make it very brief. At any rate, that is true.

Senator KING. A sort of pro bono publico?

Mr. ARMSTRONG. That being true, let us consider the question—I am aware of the fact that last year this committee decided that they would not appropriate more than $50,000,000 altogether for the payment of ships. That is, that they would leave the Navy proposal stand. Now, addressing myself to that proposition, I have something which may be a little bit new. The Undersecretary of the Treasury, Mr. Mills, who I think was at that time a Member of Congress, in appearing before this committee last year stated to the committee as to the German shipping companies that they had already been largely—well, I will read it:

> The German Government in the form of subsidies has already largely compensated German shipowners for their losses and the German shipowners are better off than any other single class of claimants.

Senator SHORTRIDGE. That is, as of to-day?

Mr. ARMSTRONG. I do not know, but that was the statement by the Undersecretary of the Treasury.

Senator KING. Did you see the report recently wired from Berlin, that there was a large procession organized in the streets of Berlin, in front of the Wilhelmstrasse of claimants protesting against the superior treatment accorded the shipowners, and saying that shipowners had gotten more out of the German Government than other nationals, and the proposition was to give them more relatively here? I saw such a dispatch.

Mr. ARMSTRONG. My answer to that is that I do not know that that is a fact. Mr. Mills's answer to the committee was this: He said that was done in the form of a subsidy rather than in the form of direct compensation. It would not be legal, because it is in the form of a subsidy on ships now being built rather than compensation for ships seized. That appears on page 30 of this committee's hearings last year.

Now, my point is this: That we have a claim against the German Government of $42,000,000. If the German Government has compensated the German shipping companies, whether it be by way of a subsidy, loan, grant, or whatever form, their subsidy has been in, it seems to me, that the claim now for the ships is that of the German Government's, and there is no reason that I can see why you should make an appropriation of $50,000,000 to pay anyone, because the German Government owes you $42,000,000 and interest, amounting to $60,000,000. So that if you offset our claim against the German Government, against the German Government's claims for compensation made to these shipping companies, you can divorce this ship proposition from this bill entirely. It need have nothing more to do with the bill.

Furthermore, under the plan which I will propose very shortly, you can pay all the American claims—private American claims—in full with interest, and you can return the majority of the German property. By that I mean what is now held by the Alien Property Custodian according to the latest reports.

He sets up on his books what he calls trusts, the name of each corporation, firm, or individual from whom he took the property. There were 24,463 of those trusts, and you can return the entire amount of each one of those trusts, with the exception of 331, or possibly of 83, and still have enough money to pay every single American who has an award against Germany in full.

And I will tell you just how you can do it—but one second, if I may call attention to it now: I found in the New York Times last November an advertisement by the North German Lloyd Co., and it was an advertisement in connection with a bond issue. They borrowed $20,000,000 in this country in November, 1927. They say that they have a fleet at the present time of 621,000 gross registered tons. And they say they are building two new ships, the *Bremen* and the *Europa* of 46,000 tons each, which are to be ready for service in April, 1929. Also that they own 60,000 gross registered tons of smaller ships. And then they say:

> The entire fleet is modern, over half of it having been built within the last eight years, and although it is carried on the company's balance sheet as at June 30, 1927, at 142,620,000 marks ($33,957,000) the additions since 1920 alone represent an expenditure of 211,322,000 gold marks ($50,000,314).

I do not know how much has been spent by the Hamburg-American Line, but I did find a circular issued by them in which they said at the present time they had some 800,000 registered tons of ocean-going vessels.

I will pass from that now to the other: If you offset our claim against the German shipping companies' claims, there will be nothing left for you to consider except the question how you can pay the American claims, how you can most justly deal with the property of Germans seized during the war.

I think everyone agrees that you have the absolute right as a court of equity to do what you see fit with seized property, whatever you think is right and just. I find that there are 44 Germans who had invested $500,000 each or more in the United States and which was seized.

Senator KING. Corporations or individuals?

Mr. ARMSTRONG. I think both, Senator King, or I will say corporations, firms, and individuals. There are 39 more who had invested more than a million dollars each in the United States which was seized by the Alien Property Custodian. A table showing the list of all those whose property was seized of $500,000 and more will be found in the hearings on alien property before the Committee on Ways and Means of the House of Representatives, Volume IV, at pages 107 and 108. The total of those who had more than a million dollars seized is $99,870,700.77, and of those of $500,000 and upward the total is $29,487,925.17, or a grand total of $129,358,000. That is all included in the 83 we now hold.

Now, in addition to the amount held for persons from whom we seized $100,000 each and over, there are only 248. And the total of the amount held for them is $55,000,000. So that if you will add the $129,000,000 to the $55,000,000, you will get a total of $174,000,000 for those over and above $100,000 each.

If you should follow the system proposed in the Winslow Act, you could give to each German from whom $100,000 or less was seized the entire amount and interest. You could then also give to every other German, all those with large claims, of the Germans with large claims, $100,000 and over each, and you would still have enough money to pay the total estimated amount of the American private awards against Germany in full, with interest, less, as I figure it, about $10,000,000 deficit. That would be all.

Senator REED of Pennsylvania. That is, taking into it the unallocated interest funds?

Mr. ARMSTRONG. Yes. And the estimated amount to be received under the Dawes plan, which I think according to Chairman Greene is $25,000,000.

Senator KING. To date?

Mr. ARMSTRONG. I think to September, 1928. That would make another $50,000,000. The objection to that is very easy to see and I think equally easy to refute: It will be said that it is not fair for us to charge the entire——

The CHAIRMAN. Your time is up.

Mr. ARMSTRONG. Yes; and I am going to conclude right away, Mr. Chairman.

Senator KING. Mr. Chairman, he is going along rapidly, and I think he ought to be heard.

Mr. ARMSTRONG. It will be charged that to use the property of those who had invested $100,000 each, or more than $500,000 each, would constitute what has been called confiscation of private property. Now, in the first place, that does not apply at all to the ships, because they were not private property invested in the United States in any sense of the word. We, therefore, confine this argument to the private property seized in the United States.

It will be claimed that to use any of it to pay American claims is confiscation, and the refutation of that is very simple. We are not going to confiscate any at all, because the German Government, which is helping every one of these large German companies to-day—and if you gentlemen will go over the list of them, and they are set forth in the hearings of the House committee—hearings on alien property No. 4, pages 107 and 108, 117–120, inclusive—you will find these large companies are the dye companies, the pharmaceutical companies, the steel companies, the glass companies, every one of which companies is now being actively supported in their direct commercial warfare on the United States by the German Government, according to a statement which was made here in Washington by Doctor Klein, and published in the New York Times of January 6, 1928.

In conclusion, just to give you one example: The gentleman who preceded me represented Bayer & Co. in Germany. In the report of the Alien Property Custodian in 1919 former Attorney General A. Mitchell Palmer, he said this, at page 118 of the alien property hearings, No. 4, before the House committee:

> The Alien Property Custodian found that the treasury of Bayer & Co., an American company, was one of the great sources from which propaganda funds in this country were distributed. Great sums of money due to the German house were paid after the outbreak of the war to the treasurer of the American Bayer Co., and those payments, amounting to millions of dollars, were disposed of without being put through the books, and any records which may have been kept were destroyed.

And there is one other matter: In the House of Representatives, Chairman Green stated that he thought that the hundred-million dollar appropriation was not too large, because, he said——

Senator SHORTRIDGE (interposing). You are now dealing with ships?

Mr. ARMSTRONG. Yes. He stated that he thought a $100,000,000 appropriation for ships was not too great. And he was asked why

and he said—and I want to read his exact words and I find them in the Congressional Record, volume 69, in the debates, page 756:

> In reference to the value being fixed at $33,000,000, we sold a small portion of the ships, and some of the poorest ones brought $17,000,000. So I think it is absurd to say that the value was not more than $33,000,000.

Which was the amount of the Navy's appraisal. I went through every record I could find, and finally I found what appears to be the basis for Chairman Green's statement. Last year, before the Ways and Means Committee, counsel for the North German-Lloyd and the Hamburg-American Lines submitted a table to the Ways and Means Committee purporting to show that 42 German ships seized in the United States were sold for $14,976,420, as against an appraised value of $7,000,000, which would certainly indicate that the appraisals were too low. I proceeded to analyze that table submitted by counsel for the shipping companies, and I found some errors. I found that they had included what they called the selling price of a ship called the *President Lincoln*. Well, the *President Lincoln* was sunk by a German submarine on the 31st day of May, 1918, with the loss of 27 American lives. So that was an error. I then found in the table a ship called the *Prinz Eitel Friederich*, and in the shipping companies' table they listed that ship as having a tonnage of 8,170, and they said she was sold for $800,000 against the Navy's appraisal of $142,000.

If the committee please, the *Prinz Eitel Friedrich* was never appraised at all, because she was a warship and we did not have to pay for her.

There was another ship belonging to another one of the German lines of the same name which was known as the *Prinz Eitel Friedrich*. That ship was appraised for $142,400 and sold for $60,000. So there was an error as to the amount of money. But that is not all. I went through the list, and there are apparently errors as to 22 other ships, amounting, in all, to $6,000,000. I am talking about an error in the selling price.

Senator FESS. Are you sure it is an error?

Mr. ARMSTRONG. I said an apparent error.

The basis of comparison, Senator, was the statement made to this committee by Comptroller General McCarl last year stating the prices for which these ships were sold. As to the two ships I have just mentioned, I know it is an error, and I know of another very large error. There was a ship called the *Setos*, mentioned in this table of ships sold. If any of you gentlemen happen to have this, you will find it on page 25, if that will help you any in looking it up. Unfortunately, it is not in alphabetical order. It is the fourth ship.

The *Setos*, according to the tables submitted by counsel for the ship companies, was sold for $975,000. It was appraised for $130,210 and, according to the shipping companies, it was sold for $975,000, according to the table prepared by Mr. McCarl and submitted to the Senate.

Senator SHORTRIDGE. What is the fact about it?

Senator KING. All he can tell about it is what he is saying.

The CHAIRMAN. We had report last year.

Mr. ARMSTRONG. The report that I am reading from, the report to this committee as to that particular ship, was that it was sold for $254,190 instead of $975,000.

Senator SHORTRIDGE. You say that some one claimed that it had been sold for $975,000, whereas the truth of the matter is that it was sold for the latter sum that you have just given?

Mr. ARMSTRONG. Counsel for the shipping companies submitted to the Ways and Means Committee a table which had at the top of it a list of ships, in which they used the words "sales price."

I want to be perfectly fair, because it seems that there must be some explanation of this, and I have asked for an explanation, and the only explanation that I have been able to get is this, that when counsel for the shipping companies used the words "sales price" they said that in the case of the *Setos*—I do not want to talk for them, but I understand that they say that in the case of the *Setos* there was a contract made under which the *Setos* was to be sold fos $975,000, but this contract contained some kind of a clause called a pioneer adjustment clause; and the result was that the Government only got the amount reported here, $296,000, for the ship, but the table was not corrected.

I merely called it to this committee's attention because apparently the chairman of the Ways and Means Committee supposed that these ships were sold for a great deal more than the Navy appraisal, and I have prepared tables showing as near as I could what the ships were sold for.

The CHAIRMAN. I want to say to the committee that the McCarl list of ships was discarded entirely by this committee, and we asked the Shipping Board to make a complete survey and report. That report and complete survey included all of the ships that this committee took into consideration when the bill was up a year ago.

As far as the McCarl report was concerned, those items, as you have already explained, one, as to the error in conncetion with one ship, and the other that there was a contract for the nine hundred and some odd thousand dollars which never was consummated—as soon as the committee saw or heard of these mistakes it discarded that list entirely and asked the Shipping Board to send a complete report; and that was the report that the Senate committee considered in reporting the bill.

Senator KING. Your position, in brief, as I understand it, is this, that it is contended by the representatives of the German ships that a certain number of ships which they give were sold for very much more than they were appraised at by the Navy. Ergo, the $34,000,000 is wholly wrong and it ought to be $100,000,000 or $200,000,000.

Mr. ARMSTRONG. Yes, sir.

Senator KING. You have gone through the list and have found that there are statements respecting those sales that are inaccurate; that instead of their being sold for $14,000,000 they are sold, some of them, for less than they were appraised at?

Mr. ARMSTRONG. Yes.

Senator SHORTRIDGE. The Navy appraised value was $34,000,000?

Mr. ARMSTRONG. Yes, sir.

Senator SHORTRIDGE. Can you give us a statement showing the sum total received from the sale of those ships, one or all of them?

The CHAIRMAN. We have that in the record.

Senator KING. I would like, before this hearing concludes, that Capt. E. P. Roberts, of the construction division of the Navy and who is now at Philadelphia, be brought before the committee.

The CHAIRMAN. He was here last year, I will say to my colleague, and testified extensively.

Senator KING. I wanted him to examine the statements made by this witness.

The CHAIRMAN. I think the statements made by the witness were made before and corrected and we took no notice of what the original estimate of the ships was. That was discarded entirely by this committee; and I think that if you get Mr. Roberts here he will say exactly what he said the last time. It was partially upon what he stated in his testimony that the whole thing was brought out and a new list of ships secured from the Shipping Board.

Senator KING. If Mr. Hunt and Mr. Devoe, representing the German shipping interests, make the same contention, at least, as I understand they made before, and there is this disparity, then I shall ask that Captain Roberts be brought here and I shall ask that this gentleman remain.

Mr. ARMSTRONG. I shall remain, sir.

Senator KING. I do not intend to suggest to the committee what ought to be done. I merely wanted to call attention to the fact that the House of Representatives seems to have relied on this table which you now find may be erroneous.

Mr. ARMSTRONG. I will stay here, sir, and be very glad to answer any further questions.

STATEMENT OF ARTHUR G. HAYS, NEW YORK, N. Y.

The CHAIRMAN. If you will take about 10 minutes, Mr. Hays, the committee will be very glad to hear you.

Mr. HAYS. I represent, gentlemen, a German corporation by the name of Hochfrequenz-Maschinen Atkiengesellschaft, which I shall refer to as "Homag."

My claim involves a comparatively small amount of money, not millions.

I ask for an amendment of section 4, subsection 2, of the present bill. That bill provides for compensation to the owner of a radio station sold to the United States Government. One of the stations was known as the Sayville station.

The Homag Co., which I represent, owned the Tuckerton station, and I am asking for an amendment so that the owner of the Tuckerton station may receive compensation as well as the owner of the Sayville station.

The CHAIRMAN. Why do you say that the House bill has reference to only one station?

Mr. HAYS. Because that was the only station sold to the United States.

The CHAIRMAN. Yes; I remember, now.

Mr. HAYS. That is the reason for the difference.

The facts as to the Tuckerton station are as follows:

In 1912 Homag made a contract with the French company, which I will call "Cutt," because I am unable to pronounce the corporate name in French. Cutt agreed to purchase the station that Homag was constructing in the United States, agreeing to pay therefor the construction cost up to 2,000,000 francs. Cutt paid one and a half

million francs and had paid that amount up to the time of the outbreak of war between Germany and France.

In 1914, therefore, Homag was in charge of the Tuckerton station, and there was still 500,000 francs due, and in addition to that they had expended more money at the request of Cutt.

In 1914 the Navy Department took over the station. They collected hundreds of thousands in tolls of the station.

Senator KING. Why did we take it over then?

Mr. HAYS. Probably in order to control the messages.

It was owned by Homag; and the Navy, in 1914, took it over, probably in order to control the messages.

Senator KING. We were not in the war then.

Mr. HAYS. They took over the station, anyway, and collected tolls, amounting to between $400,000 and $500,000.

The CHAIRMAN. By our Government?

Mr. HAYS. Yes; by the Navy Department.

When we came into the war the Alien Property Custodian seized that station. He looked up the contract with the French company and arranged with the French company that they organize a paper corporation here called the American Radio Co. The American Radio Co. bought that station for $25,000 in cash, agreeing, however, to pay in addition whatever further sum might be found due from Cutt to Homag, and Cutt put up a bond of $125,000. Shortly thereafter the bond was canceled, for what reason I do not know, So that the Alien Property Custodian for that station got $25,000, and $411,000 collected by the Navy Department was turned over to the French company.

They turned over to the Alien Property Custodian only $28,000, which he said was the amount they had expended. At any rate, this paper corporation received the station for $25,000 in cash and got over $400,000 in tolls.

The whole situation was appalling. I can not explain many of the doings of the Alien Property Custodian at that time. We were simply appalled by what was done with reference to this company. The Alien Property Custodian has $53,000 in payment for that station.

The bond of the Cutt company, as I say, was canceled. Claim was made on the Alien Property Custodian for $5,000 in cash, plus claims of Homag against Cutt. I represented Homag in those claims, worth $25,000. I then found that the American Radio Corporation was a paper corporation. I could not get jurisdiction over the French company, and the Germans will get nothing out of that claim.

Under those circumstances I can not understand why a bill going through Congress should provide for payment for one station sold for Navy uses, in other words, the Sayville station, and not make provision for compensation for the Tuckerton station.

Price, Waterhouse & Co. say that the amount due is $116,000. I almost said "only $116,000," because of the very large figures that I have been hearing to-day; but at least that amount is due as a minimum.

The CHAIRMAN. There is no provision in the bill for a private concern, and this was a private concern, and there was a differentiation

made between this and the other radio station at Sayville. That is the reason.

Mr. HAYS. The difference is that this one station was sold to the United States for about $50,000, while the station I represent was sold to a paper corporation for the French company. The only answer to my proposition might be that it would be impossible to pass a bill making good to German corporations the amount of loss by reason of mismanagement by the Alien Property Custodian.

But we claim that this is an exceptional case, for three reasons:

First, that the Government itself had to do with it. The Navy Department took over this station and collected tolls, which the Government improperly paid to the French company.

The CHAIRMAN. That was done on a mistaken thought.

Mr. HAYS. Yes, sir; that was done on a mistaken thought from the German point of view. They did not get it.

The CHAIRMAN. In the report it certainly developed that this station was owned by nonenemies and that certain enemies had lines upon it under construction, contracts, and otherwise.

Mr. HAYS. Yes, sir. It is the fault of the Navy Department that those people have lost this money; and a short amendment to this bill to compensate them for the value of their rights would take care of that situation.

The CHAIRMAN. Have you an amendment?

Mr. HAYS. Yes, sir.

The CHAIRMAN. Just put it in at this point.

Senator HARRISON. I wonder if that was presented to the House.

The CHAIRMAN. Yes; and it was presented here a year ago.

Mr HAYS. I presented them by letter, and I suppose my letters were ignored.

The CHAIRMAN. I would not want to say they were ignored. The matter was discussed by the committee.

Mr. HAYS. My amendment is as follows:

Any radio station, or rights therein, including any equipment, appurtenances, or property contained therein which was sold [eliminate words "to the United States"] by or under the direction of the Alien Property Custodian under authority of the trading with the enemy act, or amendment thereto. Such compensation, if for a radio station, shall be the fair value as nearly as may be determined, which such radio station would have had on July 2, 1921, if returned to the owner on such date, in the same condition as on the date on which it was seized by or on behalf of the United States, or on which it was conveyed or delivered to or seized by the Alien Property Custodian, whichever date is earlier, except that there shall be deducted from such value any consideration paid for such radio station by the United States. Such compensation if for rights in and to, connected with or relating to a radio station, shall be the fair value as nearly as may be determined, which such rights may have had at the time of the conveyance thereof by the Alien Property Custodian, except there shall be deducted from such value any consideration paid to the Alien Property Custodian on account of such radio station.

The CHAIRMAN. Leave that with me, please.

You could not get jurisidction of the French company?

Mr. HAYS. It is impossible. I have a claim against a paper corporation.

The CHAIRMAN. Where was it organized?

Mr. HAYS. In New York State.

Senator KING. At the suggestion of the Alien Property Custodian?

Mr. HAYS. It was done at his suggestion. There was a bond for $125,000 that, for some unknown reason, was canceled.

Senator McLEAN. With the consent of the German company?

Mr. HAYS. No. The German company never knew anything about it.

The CHAIRMAN. What was the nature of the bond?

Mr. HAYS. It was sold for $25,000. The matter was never arbitrated, but Cutt put up a bond for $125,000 and the bond was canceled. So we have left the $25,000 with the Alien Property Custodian and a claim against this foreign company that is unenforcible to-day.

The CHAIRMAN. The German company had an interest in the bond, did it not?

Mr. HAYS. Through the Alien Property Custodian; yes, sir. The Alien Property Custodian represented our interest and canceled our bond.

Senator KING. The bond was given to protect the Germans?

Mr. HAYS. Yes.

Senator KING. And the Alien Property Custodian acted improperly or imprudently and released the bond——

The CHAIRMAN. The Alien Property Custodian will explain the whole transaction in detail to the committee.

Senator KING. It seems to me there is a good deal of merit in the application here.

Mr. HAYS. When we found that there were over $400,000 given to the French company and the bond was canceled, it was appalling.

Senator KING. I do not want to legalize improper acts of the Alien Property Custodian here.

Mr. HAYS. May I suggest this, that the only reason I am here before this committee is because of these acts of great injustice by the Alien Property Custodian, and it is almost impossible by a bill in Congress to cure all the injustices that were done. I represent other claimants whose property has been mishandled. I am not before you on those, but I think this can be given special treatment in this bill.

There are three reasons that I want to give. The first is that the Government had to do with this radio station because the Navy Department took it over and collected the tolls; secondly, that ordinarily when the Alien Property Custodian sold property for an inadequate consideration, the amount he sold it for was paid to him. Here he sold it for $25,000 plus an agreement by somebody to pay some more, but he never collected the balance; and, my third point is that you are making provision in this bill for payment for one radio station which was sold to the United States by the Alien Property Custodian; but the Alien Property Custodian, after all, represented the Government, and from the German point of view it does not make a bit of difference whether the station was sold to the United States for an inadequate compensation or turned over to some one else for an inadequate compensation.

Therefore we ask the amendment that I have proposed.

Senator McLEAN. You are using general language there.

Mr. HAYS. The bill takes care of only one. There are two radio stations.

I thank you, gentlemen.

STATEMENT OF A. W. LAFFERTY, ATTORNEY AT LAW, NEW YORK, N. Y., FOR CERTAIN GERMAN CLAIMANTS

Mr. LAFFERTY. Mr. Chairman and gentlemen, I am the attorney for a number of smaller German property owners, including four members of the Werner family, lately of California, and others.

I believe I have asked as often and as insistently as anyone, probably, that at least short hearings be had this year on the bill. As a result of the hearing so far to-day I feel that a great deal of valuable information is going to be developed and that possibly much good will result.

If I am correct in assuming that there was a distinct drift of the committee this morning toward an agreement, a general consensus of opinion that the 80–20 plan should be reported out favorably by the Senate committee this year——

The CHAIRMAN. I wish you would not spend any time on what the committee is finally going to do on that.

Senator KING. No; do not make any assumptions. We are a jury.

Mr. LAFFERTY. I thought I saw such a drift and if so I would not have as much complaint to make over the so-called Kiesselbach-Sidley program and the 40–60 plan as I had intended to make, because if my clients can get back now 80 per cent of their capital with interest-bearing securities for the remaining 20 per cent of their capital, as the House bill now provides, and if we can also get certificates which will bear interest for the interest money which our capital earned before March 4, 1923——

The CHAIRMAN. I wish you would take up this interest question and say particularly what you have already said to me in relation to it, and make your statement as brief as possible and to the point.

Mr. LAFFERTY. All right. If we could get those things I would be very well satisfied indeed, and my clients would be, with the action of Congress at this time.

INTEREST-BEARING CERTIFICATES DESIRED

I will take up, first, an amendment which I desired to submit for the consideration of the committee relating to the interest money earned before March 4, 1923.

On page 24 of the bill, line 24—I will read subsection (e), including what I am referring to:

(e) The Secretary of the Treasury is authorized and directed to issue to the Alien Property Custodian, upon such terms and conditions and under such regulations as the Secretary of the Treasury may prescribe, one or more participating certificates, bearing interest payable annually (as nearly as may be) at the rate of 5 per cent per annum, as evidence of the investment by the Alien Property Custodian under subsection (a)—

The investment by the Alien Property Custodian under subsection (a) here referred to is the investment of the capital withheld. So that part of subsection (e) is all right so far as my clients are concerned, if I truly represent them.

Proceeding, the section reads:

and one or more noninterest bearing participating certificates as evidence of the investment by the Alien Property Custodian under subsection (b).

I suggest, in line 24, that the words "noninterest-bearing participating certificates," on page 24, be stricken out, and that the words "participating certificates bearing interest payable annually (as nearly as may be) at the rate of 5 per centum per annum" be inserted in lieu thereof.

Senator KING. Which would mean interest upon the certificates the same as upon the original investment?

Senator REED. Interest on interest.

Senator SHORTRIDGE. In a word, what would be the effect?

Mr. LAFFERTY. In a word, this amendment would mean that you are going to give certificates to my clients for that part of their money which you did not give back to them. There is 20 per cent of their capital account that you do not give back to them. Under subsection (a) Senator Sutherland invests that 20 per cent in good certificates bearing 5 per cent interest. Therefore it does not make any difference whether they are paid immediately or not; we get interest on them.

But take the case of Henry Werner, late of California, and his brother, F. Werner. That will illustrate the injustice of this discrimination.

Those two boys inherited from their father, in California, about $50,000 worth of property each. It was partly in real estate. The $50,000 of Henry Werner was drawing income, and under the common-law trustee theory, upon which all of this property is held, the custodian has carefully and conscientiously saved and preserved all of the income and increment and usufruct, as Senator King calls it, for Henry Werner, because it was in the form of income-producing property.

The income during five years, from 1918 to 1923, March 4, of the one brother was about $10,000, and the custodian holds it and is going to give it back to him under this bill.

But the Union Oil Co. of California wanted to buy the real estate belonging to the other Werner brother, and they made application to the custodian, and it was sold and converted into cash. That cash was put into the Treasury of the United States and invested in Liberty bonds and has been earning 4 per cent interest from about 1918 or 1919 down to March 4, 1923—five years at 4 per cent on $50,000—all the boy has, and he has a wife and several children to support. He is an invalid, back in Munich. I was at his house and had dinner with him recently, and with his wife and children. I know these people well——

Senator SHORTRIDGE. I know tham all.

Mr. LAFFERTY. If you give this man F. Werner back his capital account and refuse to allow him anything but noninterest bearing certificates for what his capital earned during the five-year period—it earned 4 per cent in the Treasury, and $50,000 for five years is 20 per cent, $10,000, you discriminate against him. My client is entitled to $10,000 interest earned, if we had the account stated as of to-day. If we state the account as of the date of the passage of this bill, what are you going to do about paying F. Werner? You are going to pay the other brother, Henry, all of the $50,000, and increment, because you did not turn it into cash. The custodian owes for Henry Werner $60,000. He gets back, under this bill, 80 per cent of that, and gets

interest-bearing certificates for all the balance; but as to F. Werner—I think the committee must now understand this point—you propose to give him what his trust estate, under the common law trusteeship, produces during a period of five years, to give him noninterest-bearing certificates which Chairman Green in his report says are to be paid under the eleventh priority, and nothing will be paid on these noninterest-bearing certificates for at least 23 years.

Senator McLEAN. Did you present this matter to the House committee?

Mr. LAFFERTY. I was too ill last year to present anything.

Senator McLEAN. This year?

Mr. LAFFERTY. I applied for hearings, and the doors were locked against any hearing; this year nobody was heard. That is why I wish to express my gratitude in behalf of my clients to this committee and to its chairman.

Senator McLEAN. Did you communicate with the chairman of the House committee in regard to it?

Mr. LAFFERTY. I communicated in the same insistent manner as I have with you, Senator.

Senator SHORTRIDGE. Have you reduced your thoughts to written form to submit to the committee heretofore?

Mr. LAFFERTY. I have a printed brief.

Senator KING. On this point?

Mr. LAFFERTY. Yes, sir, on this point; but I fear there may be so much other matter with it that the committee may not find it. I was a Congressman for four years, myself, and had committee hearings, and I know how burdensome the duties are of a Member of the House or the Senate.

Senator KING. Supposing we take cognizance of this apparent discrimination—I do not concede that it is; I do not know—would we not have to rip up all other cases where these noninterest bearing certificates will be issued, and all other conversions of property and make inquiry to determine whether they come within the same category as this property?

Mr. LAFFERTY. No. It will not rip up anything. It will not interfere with the plan of the bill in any way whatsoever.

Senator SHORTRIDGE. The death of one of the Werner brothers would not affect the principle of what you are seeking?

Mr. LAFFERTY. Oh, no.

The amount involved, in the aggregate, in this interest question is about $25,000,000.

I would like to run through the bill hurriedly and suggest some amendments, if the committee please. I will come back to that interest question as I go through.

I wish to add this to what I said on this interest bearing certificate question. Somebody has said here, and I have heard the expression from several Senators, "interest on interest"; but that is not a fair way to look at it. I do not believe you will regard it so if you study it. It is not a fair way to consider this—"interest on interest." When the amount of interest is due to-day, that is a stated sum of money due my client and other people who are in the same boat.

The CHAIRMAN. You need not go into that.

Senator REED. Is there similar advantage given to the American claimants? Do they get interest?

Mr. LAFFERTY. They get interest at 5 per cent on their awards from the date of the injury.

Senator REED. Some interest is due to them at this minute?

Mr. LAFFERTY. Yes; and they are going to get it.

Senator REED. Are they going to get interest on that interest?

Senator SHORTRIDGE. That is compound interest.

Mr. LAFFERTY. I do not know that they are going to get compound interest, but they are going to get annual interest on their awards, not only from the date the award was made, but from the date of the injury.

Senator REED. The German client that you speak of is going to get interest on his property from the date it was taken, is he not? That is why there is interest due to him to-day.

The CHAIRMAN. No, Senator; he would not.

Mr. LAFFERTY. We are not asking for principal, but interest. I am only going to ask that when you find out how much is due my client——

The CHAIRMAN. The original amount in 1923 was $10,000. When we find out the amount due to-day he wants a certificate for that full amount.

Senator REED. Which will bear interest?

Mr. LAFFERTY. And then the interest upon that certificate thereafter until paid.

Senator REED. What I am trying to find out is whether the bill gives any such privilege to the Americans.

Mr. LAFFERTY. The Americans are going to be paid interest on everything; and they certainly have found everything that is coming to the Americans. They have overlooked nothing.

Senator REED. There is nothing mysterious about the words "compound interest" or "simple interest." You are asking compound interest, asking that the interest be compounded for this client of yours, F. Werner.

Mr. LAFFERTY. No; not at all. I beg your pardon. I am not asking for any compound interest at all.

Senator REED. We will not quarrel about the term.

Mr. LAFFERTY. I hope I am not misunderstood. The money invested in the Treasury from 1918 to 1923 earned 4 per cent interest.

Senator REED. And you are asking interest on that amount?

Mr. LAFFERTY. The bill as it stands, proposes to give him a certificate for that amount.

The CHAIRMAN. With no interest?

Mr. LAFFERTY. For the total amount due him as of to-day, all interest money.

Senator SHORTRIDGE. Looking to the future, you want payments?

Mr. LAFFERTY. Yes. When these deferred certificates are paid in the distant future, according to the plan of the bill, 25 years, Mr. Mondell said this morning—and Mr. Mondell said he hoped you would make them interest-bearing certificates——

Senator REED. Is not that compound interest, to pay interest on interest? Is not that the very definition of compound interest?

The CHAIRMAN. Yes; that is what it is.

Senator KING. If I understand the situation, Senator—I may be confused—he wants not only the interest upon the interest, but he is more concerned in the interest on the principal.

Senator REED. He has got that.

Mr. LAFFERTY. No; we are not getting that. We are not getting it at all. There is where the mistake comes. I see, now. I have the highest regard for Senator Reed——

Senator REED. Never mind that. Perhaps you will not have after we get through.

Your client is going to get a certificate for the 20 per cent that is withheld from his capital. Is that right—under the terms of the House bill?

Mr. LAFFERTY. Correct.

Senator REED. By the terms of the House bill, that bears interest?

Mr. LAFFERTY. Yes.

Senator REED. So there is no question about getting interest on the withheld part of that capital?

Mr. LAFFERTY. That is true; no doubt about it.

Senator REED. You say that certain interest has accrued on that capital up to the present time?

Mr. LAFFERTY. Which should be treated as a part of the capital.

Senator REED. Precisely; and if we did that you would find that the accrued interest amounted, up to now, to about $10,000?

Mr. LAFFERTY. Correct.

Senator REED. You want a certificate for that $10,000 which in itself will bear interest?

Mr. LAFFERTY. Yes.

Senator REED. Turning the thing around, take the American claimants who have got a claim for $50,000 against the German Government, so found by the Mixed Claims Commission. The time of the injury, we will say, was so far back that the accumulated interest up to this minute is $10,000 on this American's claim.

Mr. LAFFERTY. Correct.

Senator REED. Does he get a certificate for that?

Mr. LAFFERTY. No; he gets paid in cash.

Senator REED. If he has a large claim he does not get paid in cash; if it is over $100,000 he does not.

Mr. LAFFERTY. He gets paid in cash for a proportionate part of it.

Senator REED. All right.

Mr. LAFFERTY. Within two or three years he gets the balance; and in giving him the balance you pay him not only his principal award but interest; so he loses no interest.

The CHAIRMAN. You might modify it by saying that perhaps he will get it within three years.

Senator SHORTRIDGE. He gets interest on the deferred payment?

Mr. LAFFERTY. Absolutely.

Senator REED. He has not got a cent from anybody up to this time, has he?

Mr. LAFFERTY. No. Nothing has been paid on the award, but it has been calculated every year and added to his capital.

Senator REED. There is $10,000 of interest due to him at this minute, we will say?

Mr. LAFFERTY. Yes.

Senator REED. Is he going to get interest paid on that interest, or is he merely going to get the face amount of the interest?

Mr. LAFFERTY. I agree that there might be a very few years that he would have some interest money due that he would not get any interest money on.

Senator REED. It may be eight years. On the face of the House bill it will take something like eight years for the American claimant to get the same privilege that you are asking for your German client.

Mr. LAFFERTY. If it is going to be postponed for 23 years before he gets paid something, I would say that he ought to have interest on that part as well as on the other.

Senator KING. I may be in error, but my understanding is that the account would be stated some time about January 1, 1928, and then the American claimant would get interest upon interest, too.

Mr. LAFFERTY. I thank the gentleman for helping me out.

Senator KING. It takes a long time to get to a simple fact. Then the American does get the privilege that this gentlemen is asking for his client.

Mr. LAFFERTY. I thank the Senator for solving this very difficult problem for my clients.

The CHAIRMAN. That is what I said long ago.

Mr. LAFFERTY. I thank you, also, then. I realize that I should not "throw any bouquets," but I realize the character of the men that I am appearing before.

I shall hurry through the bill.

A year ago the Senate made a report to the House to use this unallocated interest money and not give anything for it, not even noninterest bearing certificates or anything.

That is what I especially object to. Certain events have happened since this report was made, which I called to the attention of Senator Smoot in his office the other day. He was kind enough to listen to me for a few minutes, and I wish to call it to the attention of the committee.

A decision of the Supreme Court of the United States in Henkels against Senator Sutherland——

Senator KING. Where do you find it?

Mr. LAFFERTY. I have it right here. It is in 271 U. S., at page 298. It is the unanimous opinion of the Supreme Court of the United States written by a former Senator Sutherland, of Utah; and here is what the court said in regard to the interest.

The CHAIRMAN. It must be so, then.

Mr. LAFFERTY. When the Supreme Court says its so unanimously, it is so. Here is what it says:

> By the clear import of the statute claimant's rights in respect of such proceeds are not inferior to his rights in respect to the original property, and no distinction fairly can be made between the accumulated interest upon securities constituting the proceeds in the one case and like securities constituting the property in the other.

Since that decision was rendered the Attorney General has had occasion to construe its meaning. In this case it happened to be an American citizen whose property had been erroneously seized and some of the money invested in the Treasury, and he got back the principal and he sued for the interest.

Senator SHORTRIDGE. He got it under that decision, did he not?

Mr. LAFFERTY. Yes. The court said he was entitled to it and that there could be no discrimination between interest money and capital account.

And that is the principle that I am asking for. That has been construed by the Attorney General, and by the Supreme Court of

the District of Columbia since this honorable committee made its report a year ago in which they made this proposal——

Senator KING. Without calling your attention to the report, your contention is that they did not follow this opinion?

Mr. LAFFERTY. Yes.

Senator KING. And you ask now that this committee follow that principle?

Mr. LAFFERTY. Yes, sir.

PRIORITIES OF BILL

Senator KING. What is the next point you have, Mr. Lafferty? I think we understand that.

Mr. LAFFERTY. I have studied this bill, amounting to about 40 pages, for the last two months, all the time; I have not done anything else. I will run through it hurriedly, if the committee will permit me, and call attention to several other amendments that I think would help the bill. In some of them I just merely call the attention of the committee to the language of the bill which is very hard to understand without long study.

The declaration of policy on page 1 of the bill——

Senator KING. I do not think, Mr. Chairman, that he need waste his time on that, because we struck that out before and I am in favor of striking it out now.

Mr. LAFFERTY. Here is something which you may wish to strike out, on page 3, lines 16, 17, and 18:

(f) The amounts awarded to the United States in respect of claims of the United States shall not be payable under this section.

If you should decide that you want to pay claims of the United States along with the last 20 per cent of the German capital and the last 20 per cent of the American damage awards, if you want to put your Government awards of $40,000,000 plus interest, total, $60,000,000 on an equality——

Senator KING. Then you would strike that out?

Mr. LAFFERTY. Yes, on page 3; and on page 18, line 19, I would change that subparagraph (10) to read as follows:

To make such payments as will equal the difference between the aggregate payments (in respect of the awards of the Mixed Claims Commission) authorized by subsections (b) and (c) of section 3, and the amounts previously paid in respect thereof; to make such payments as are necessary to repay the amounts invested by the Alien Property Custodian under subsection (a) of section 25 of the trading with the enemy act, as amended——

Senator KING. If we conclude to put the United States in the same category with others, we will have to make the first amendment, and then, of course, corresponding amendments through the bill. Just leave those with us, because if we adopt that policy we would have sense enough to carry that through.

Senator REED. We have the benefit of draftsmen here who will carry it out.

Mr. LAFFERTY. If you will adopt such an amendment as this which has been referred to, by putting $60,000,000 of American awards on an equal basis with those deferred 20 per cents on both sides of the ocean, it would come under this priority No. 10.

The CHAIRMAN. Your clients are not interested in this, are they?

Mr. LAFFERTY. Oh, yes; priority No. 11——

The CHAIRMAN. That is another thing.

Mr. LAFFERTY. Priority No. 11, which follows this, pays these noninterest-bearing certificates for the money we were just talking about in the Treasury. So it is an important point, I believe, and I shall urge it in behalf of my clients, that if you do put your own American claims in with what I have just mentioned——

Senator KING. You mean the Government claims?

Mr. LAFFERTY. Yes, sir. If you put them in and pay them concurrently, your $60,000,000 to Uncle Sam and the last 20 per cent of capital account on the other side and awards on this side—when you have paid that, the whole show is over. Everything is completed except one, and that one comes in the next paragraph on page 19, priority No. 11, which is the last and final payment of the so-called noninterest-bearing certificates. If they are interest-bearing or noninterest-bearing, it does not hurt Uncle Sam one penny, because it comes 25 or 50 years from now, anyway, and comes from German moneys, from our $10,700,000 a year under the Paris agreement following the Dawes plan.

The CHAIRMAN. If it is paid?

Mr. LAFFERTY. It surely will be paid regularly by Germany, unless that thing which is more likely happens, to wit, that within six years there is a complete readjustment of all these international debts and the German reparations and the Dawes plan; and if there is such a readjustment within the next five or six years, all the balance of these securities that are outlying will be taken care of and retired at that time.

There has been so much said here, Mr. Chairman and gentlemen of the committee, about whether these Dawes payments will be kept up, that I want to say a word about the probabilities.

The CHAIRMAN. I do not think there is any necessity of that.

Senator SHORTRIDGE. Mr. Chairman, there is to be a meeting of the Committee on Privileges and Elections at 4 o'clock, and I will ask you to excuse me and other members of the committee who have to attend that committee.

Senator KING. I am the ranking Democratic member of that important committee, and I will have to go, too.

The CHAIRMAN. Very well. The testimony will all be in the record.

Senator KING. I wanted to ask Mr. Lafferty a question, but I will not be here to propound it. I hope he will answer it and it will go into the record.

Do you know whether or not the property which was seized by the British custodian, particularly stocks and bonds which were purchased by Germans through the Deutsche Bank and other banks—whether the proceeds resulting from the sale of those stocks which were owned by German nationals were devoted to liquidating the claims of German banks, or whether we are paying money now to the bank which it will keep and not reimburse its nationals for the stock which was sold and which it got the benefit of in the liquidation of its debts?

The CHAIRMAN. I am quite sure he will answer that, because he discussed the question with me. We will have it put into the record.

Senator KING. I am told that there was some stock sold which was acquired by these nationals and the bank got the benefit of it and these nationals did not; and I want a provision in this bill, if that be true, that it will not be paid to the bank until it makes complete proof, beyond all reasonable doubt—more than a preponderance of the evidence—that is does not belong to any of its depositors or any of its customers.

Mr. LAFFERTY. As I understand the facts, they are just as the Senator has assumed them in his question, and I think an amendment ought to be put in this bill to safeguard the rights of German customers of the big German banks who invested in American shares or certificates which were seized in London——

The CHAIRMAN. I understood that you had an amendment. When you reach that I want you to present it and we will take it into consideration.

Mr. LAFFERTY. Is the committee going to adjourn at 4 o'clock?

The CHAIRMAN. No; I want you to go on until you get through.

Mr. LAFFERTY. If our noninterest-bearing certificates are changed into interest-bearing certificates and still occupy the eleventh priority, it would not postpone anything; we would get it out of Germany in the end. So I feel that we ought to have that.

SHIP CLAIMS

I will say a word about the ship claims, because section 4 of this bill concerning ships occupies from page 5 to page 15. There are 10 pages.

The CHAIRMAN. The parties whom you are particularly interested in having nothing to do with the ships, have they?

Mr. LAFFERTY. No; nothing whatsoever. Our only interest in that is that we do not want too much of a burden put on this bill which may indirectly postpone our rights in any way.

The CHAIRMAN. Do not take the language into consideration; just take the principle, and if you have anything to say about the principle, that is all right.

Mr. LAFFERTY. Thank you, Mr. Chairman.

The bill as it stands here appropriates not to exceed $100,000,000, to pay awards to be fixed by the arbiter to be appointed by the President for the payment of German owners for their ships, a radio station and certain patents. The United States did not use any patents except during the war, I think, and that is not included in this bill.

I think in this appropriation of $100,000,000 for ships, radio station, and patents the words "radio station and patents" do not mean very much. They are really put in there more for scenery, as one gentleman said, than anything else.

The CHAIRMAN. The committee knows why they were put in there.

Mr. LAFFERTY. In substance the appropriation is not to exceed $100,000,000 for ships. They were appraised by a naval board at the time they were taken over, a competent naval board, under authority of an act of Congress, at less than $34,000,000—a little less than $34,000,000.

After these ships were so appraised Congress had set up an Alien Property Custodian's office to hold all moneys that might in the future be claimed by Germans; and it is a matter of record of the

custodian's office that the Alien Property Custodian wrote out demands upon the President of the United States that this amount for which these ships had been appraised, about $33,000,000, should be paid over to the Alien Property Custodian and put in a trust, just as these other Alien Property Custodian moneys are now held in trust for the benefit of the former German owners of the ships.

Those demands were not actually served, and I am told by a prominent member of the custodian's staff that Mr. LeFevre, who sits here, while an attorney in the custodian's office, was in charge of that particular matter, and Mr. LeFevre went over to see whether the demands would be served and turned over, and it was agreed not to serve the demands, and the demands were canceled. If the money had gone into the custodian's funds you can see how readily it would be treated the same as the proceeds of the sale of the Bosch Magneto Co., or the proceeds of the sale of any other company in America.

Mr. LeFevre later became one of the attorneys for the North German Lloyd, after he left the custodian's office, and he sits here to-day. I suppose he is still an attorney for the North German Lloyd. I make no objection to that, but I merely state it as a matter of history so that you will know what is going on and what did go on before. If this ship money, this $33,000,000, had gone into the custodian's hands as it probably should have gone in the first place, it would have simplified this bill very much to-day. The German shipowners would get back 80 per cent of that $33,000,000 plus interest from March 4, 1923, on that cash at 4 per cent.

And if they got interest-bearing certificates for the money earned before March 4, 1923, that would bring it up to about $50,000,000 that they would get.

If the committee should desire to follow the general plan of this bill and still cut the ships down to about $50,000,000, which is about all they would have gotten if their money had gone into the hands of the Alien Property Custodian, the committee can do it very well by an amendment very similar to the amendment this committee proposed last year, to award to the shipowners an amount not greater than the appraisement by the Navy Board for any ship. They were all appraised except two or three small craft that did not amount to much. Substantially they were all appraised.

If you give them the amount of the appraisement plus interest from March 4, 1923, and not from July 2, 1921, the date the war ended, but interest from March 4, 1923, at the rate of 4 per cent, you would then be giving to these gentlemen who own these ships exactly the same treatment as you would be giving to all other German owners whose property in America was sold or transferred at what was thought to be the fair value of the property put into the hands of the Alien Property Custodian.

The Winslow Act was passed on March 4, 1923, giving back to each German owner as much as $10,000, and interest thereafter, on all of his custodianized property not to exceed $10,000 per year.

The Deutsche Bank has $17,000,000 in the hands of the Alien Property Custodian. That just about equals the amount due the biggest one of these shipowners. The Hamburg-American Line was appraised at about $17,000,000. They could only get $10,000, but as the result of the passage of this $10,000 relief law on March 4, 1923, the custodian changed the system of keeping books, and from

March 4, 1923, has credited all interest money earned in the Treasury, no matter where it is earned, to the capital account. That is why all the German owners are getting back their interest under this bill as capital from March 4, 1923, down to the date of the release, but they are not getting back the capital at interest which was earned from 1918 or 1919 down to March 4, 1923. That is called the unallocated interest, amounting to, for German accounts, something over $25,000,000.

I want the shipowners to have everything they are fairly entitled to, but I do not want the bill loaded down by somebody that expects to get more than they are entitled to and in that way probably detract from the chances of the passage of the bill.

Senator GERRY. How many other amendments have you, Mr. Lafferty?

Mr. LAFFERTY. I have several other amendments here that I desire to propose.

The CHAIRMAN. Well, go right along with them.

Mr. LAFFERTY. If the committee wants to adjourn I should be glad to desist from any further talk or come back to-morrow.

The CHAIRMAN. I would like to have you confine the amendments that you discuss to the question affecting the parties that you are representing.

Mr. LAFFERTY. I shall try to do that, Mr. Chairman.

The CHAIRMAN. No doubt there are other witnesses some of whom may cover this whole ground.

CUSTODY OF CERTIFICATES IN FUTURE

Mr. LAFFERTY. Here is a provision on page 25 of the bill in paragraph 2, beginning with line 12, which I will read. I do not understand exactly what it means and I desire to suggest an amendment. Section 2 reads as follows:

> Such certificates shall not be transferable, except that the Alien Property Custodian may transfer any such participating certificates evidencing the interest of a substantial number of the owners of the money invested, to a trustee duly appointed by such owners.

Now, that would mean, of course, that after this bill goes into effect $50,000,000 or $100,000,000 in the hands of the Alien Property Custodian belonging to my clients in Germany, he might group them together and give their certificates to a trustee duly appointed by such owners. Now, "duly appointed" might mean by a majority, and I can not understand what this is for anyhow. If these certificates are not to be paid for a long time, special certificates for the interest prior to 1923, how would it help anybody to transfer them to a trustee? I suggest striking out the words "evidencing the interest of a substantial number of the owners of the money invested, to a trustee duly appointed by such owners," and inserting instead the words "to the Treasurer of the United States under such rules and regulations as the President may prescribe."

That is, that these certificates shall be nontransferrable, except that the custodian, if you decide to abolish his office in two or three years, can transfer those certificates to the Treasurer of the United States, under such rules and regulations as the President might prescribe.

The Deutsche Bank and many others may come to the custodian and say, "We have arranged for you to transfer these certificates to the Germanic Trust Co., or some such concern." I understand there is one trust company organized having in mind getting these certificates transferred to them. They have opened an office on Under den Linden, in Berlin. We feel that the certificates ought to be in the hands of officers of the United States or somebody we know and not in a blind pool as that provides for.

PERCENTAGE TO BE WITHHELD

Subsection (m), on page 31 of the bill provides for the withholding of 20 per cent of the capital. It says:

No money or other property shall be returned under paragraphs (12), (13), (14), or (16) of subsection (b) or under subsection (n) unless the person entitled thereto files a written consent to a postponement of the return of an amount equal to 20 per cent of the aggregate value of such money or other property.

I am told that the Alien Property Custodian has a large unmber of accounts in his keeping, and some of them belong to a few of my smaller clients, of $10. I got an income check for 23 cents on one of the accounts that he holds. I understand that he holds some accounts for $100, some for $1,000, and some for $3,000. I am not asking for this to be done. There is not enough in it to benefit me financially, but it is merely for the sake of some of these poor people. you might insert here, after the words "or other property," in line 18, the words "in excess of $5,000." That would permit the wiping out of all trust accounts under $5,000, and they would not amount altogether to $1,000,000.

I have merely written this amendment for use in case you should decide to graduate the percentages withheld according to the amounts custodianized, and I have a few remarks to make in favor of it if it is necessary to hold more than 20 per cent of anyone's capital account. Such an amendment as this would be the way to get at it. This is just suggested for the purposes of consideration. I suggest that you substitute in place of subsection (m), beginning in line 13, on page 31, the following:

(m) No money or other property, in excess of $5,000, shall be returned under paragraphs (12), (13), (14), or (16) of subsection (b) or under subsection (n) unless the person entitled thereto files a written consent to the postponement of the return of the following percentages of the value of such money or property (at the time, as near as may be, of the return), as determined by the Alien Property Custodian, and the investment of such withheld percentages in accordance with the provisions of section 25, to wit, 20 per centum of the aggregate value of such money or other property up to $1,000,000; 60 per centum of the aggregate value of such money or other property above $1,000,000, and not exceeding $5,000,000, and 80 per centum of the aggregate value of such money or other property in excess of $5,000,000. Such percentages shall be deducted from the money to be returned to such person, as far as possible, and the balance shall be deducted from the proceeds of the sale (in accordance with the provisions of section 12) of so much of the property as may be necessary, unless such person pays the balance to the Alien Property Custodian, except that no property shall be sold prior to the expiration of one year from the date of the passage of this act without the consent of the person entitled thereto. The percentages so deducted shall be returned to the persons entitled thereto as provided in subsection (e) of section 25.

If you do need more than 20 per cent of the capital account of any German owner in order to pay what you desire to pay almost imme-

diately of the American damage awards, it would be no more than just and equitable to return a larger percentage of the smaller German trusts and withhold a larger percentage of the larger German trusts. The language of this suggested matter to think over is in the exact language of section (m) of the original bill, except as to those percentages.

Now, I want to go on with another amendment on page 33, line 7, subsection (o), which reads as follows:

(o) The provisions of paragraph (12), (13), or (14) of subsection (b), or of subsection (m) or (n) of this section, and (except to the extent therein provided) the provisions of paragraph (16) of subsection (b), shall not be construed as diminishing or extinguishing any right under any other provision of this act in force immediately prior to the enactment of the settlement of war claims act of 1928.

The House report this year and last year says that means that no person is to have his right under existing law diminished, and the Senate report made a year ago said that this paragraph (o) means that no person has his rights diminished under this bill. It is so involved that I confess I can not tell by reading it what it means, but if it means that no person is to have his rights diminished in any way, then how does this committe know, Mr. Chairman, that any considerable number of the German owners will take advantage of this law if it is passed? There is no certainty that they would take advantage of it.

To illustrate what I mean, if the rights of the Werner family are not to be diminished in any way and they have $50,000 each in the custody of Mr. Sutherland and he is paying all of the rents to one brother and all of the income, 4 per cent per year, to the other brothers, then they are getting 100 per cent of the income such as it is. Suppose they say, "We will just let our accounts ride with Senator Sutherland for the next five or six years." I merely call that to the attention of the chairman, and I know it will be gone over in the committee, and if this bill is to be made effective, whatever percentages are to be withheld should be made, I think, compulsory. Or if you are going to give us that privilege, make this language clear whether we are forced under it or not forced under it. I know a good many people who, if you cut them down to 60 per cent of their capital, and put it in these participating certificates and take all that increment earned before March, 1923, and put it in noninterest-bearing certificates, will choose not to come under this bill but to remain with Mr. Sutherland as a common law trustee for a good many years yet to come. So I will pass from that which I think is a very important point.

THE "LONDON AMENDMENT"

Now, I propose at the end of the bill to add section 18, which could not possibly hurt anybody and which would cover an important situation mentioned by Senator King a moment ago. It reads as follows:

SEC. 18. That notwithstanding any other provision in this act, no money or other property shall be released to any German bank hereunder, until such bank shall show to the satisfaction of the Alien Property Custodian, in any case where the said German bank may have profited in England through the application of a certificate of stock in an American corporation, equitably

owned by one of the customers of such bank, to the payment of the debts of the bank, that the bank has accounted to such customer to the full extent of the benefits so received by such bank.

Now, that is not unusual. I want to compare the proposition you have already in the bill on page 20 with that. There is not anything revolutionary about it. You have already in the bill on page 20 in paragraph (g), beginning in line 19, this provision:

There shall be deducted from the amounts first payable under this section to any American national in respect of any debt, the amount, if any, paid by the Alien Property Custodian in respect of such debt which was not credited by the Mixed Claims Commission in maki ng its award.

That is to say, that which you have already in the bill provides that if any American award holder has already proceeded against the assets of his German debtor held by the Alien Property Custodian and collected a part of his debt, that that part shall be deducted when he comes to collect his award under this bill.

The converse of that is what I have proposed here. This was put in the form of a printed brief two months ago and sent to every Senator and Congressman. The banks have had ample opportunity, if there is no truth in this report which is commonly current in Germany, to refute it by something authentic. If it be true that no big bank took advantage of a German client by permitting shares in American corporations which the German bank had bought for a German client to be sold in England and the proceeds applied to reductions of debit balances of the bank in England; if that thing did not happen as it is commonly reported to have happened, the nall these banks would need to do would be to come here to-day or to-morrow with a certified statement of their accounts in London, verified by the American consular officer, and submit it to you, Mr. Chairman, and say, "This rumor is wrong; we did not do anything of that kind." I would not even ask that this saving clause go into the bill if they did furnish you authentic evidence to refute these rumors, and I have several clients in Germany who say, "We went and bought shares before the war in United States Steel Corporation; we paid the big German bank for those shares, and the bank tells us they bought the shares for us and held the certificates for us in London.

"Now they say the shares have been seized by the British trustee and sold. We do not know where the proceeds have gone." If those shares went to the reduction of the general German debt, all right; but to understand what I am driving at you must understand the theory of these trading with the enemy acts. Our act is copied from the British act, largely. If a large part of the shares of the United States Steel Corporation, and the Southern Railway Co., which have been bought with the money of the private clients of the Dresdner Bank and the Mittle Deutsche Bank and other banks in Germany were held there en bloc in London, and were seized by the British trustee and sold and the proceeds did not go through the Clearing House to the reduction of Germany's obligations, but went into the private transactions of certain banks in England, then the proceeds of those shares redounded 100 per cent to the benefit of the German bank in that instance. That is what is commonly reported in Germany. There were a lot of lawsuits started in this country growing out of that. I have not time to go into all the details of

those suits. One of these, the leading one, is pending in New Jersey. Doctor Pilger bought some shares from the Dresdner Bank in the United States Steel Corporation and brought a suit in the chancery court in New Jersey against the British trustee and against the United States Steel Corporation, claiming that he bought 500 shares of United States Steel Corporation before the World War; that the paper certificate was in London, seized by the trustee, and that inasmuch as the corporation was in New Jersey and the owner, Doctor Pilger, was in Munich and the paper was in London, the trustee did not get a good title. Doctor Pilger has sued the trustee and the corporation asking that the court require the Steel Corporation to give him new certificates.

The CHAIRMAN. The substance of that is that you do not want the Alien Property Custodian to pay the bank any refund but to pay to the customer direct?

Mr. LAFFERTY. Not that. Here is the way it reads, in substance:

That notwithstanding any other provision in this act, no money or other property shall be released to any German bank hereunder, until such bank shall show to the satisfaction of the Alien Property Custodian, in any case where the said German bank may have profited in England, that the bank has accounted to such customer.

The CHAIRMAN. That is it. We have no customer before any money is ever returned.

Mr. LAFFERTY. The books of the Deutsche Bank and the Dresdner Bank have acknowledged——

The CHAIRMAN. Let us not argue the question as to whether it is proper or right. I just wanted your idea. I understood you to say in my office the other day that that is what you desired. It may be perfectly all right, but what I wanted to do was to get, in a few words, the substance of it. Is not that what you intend; that is, whatever benefits are paid out by the Alien Property Custodian goes to the customer of the bank rather than to the bank itself?

Mr. LAFFERTY. No; for instance, you pass this law to-morrow, and the Deutsche Bank comes down next week to the Alien Property Custodian and says, "We would like to have a check for our money." "All right," the custodian says, "but did you apply to your own benefit the proceeds of any shares in England, of American corporations belonging to your customers?" The Deutsche Bank would say, "No; we did nothing of that kind. We will show you our books at London. We will show you the sales." Then the Alien Property Custodian will say, "Gentlemen, I am satisfied. Here is your check for everything." But if they could not do that—if there are a few people in Germany that they have hornswoggled, to use a Missouri term—they would be compelled to do the honest thing by those few people before receiving their check.

The CHAIRMAN. Therefore, it must go back to all the customers in order that one or two men should be treated right. I do not know how you can select them.

Mr. LAFFERTY. We do not select them at all.

The CHAIRMAN. The Alien Property Custodian does.

Mr. LAFFERTY. He does not.

The CHAIRMAN. Then you will never get anywhere.

Mr. LAFFERTY. It does not mean that the money will not be paid direct to the bank.

The CHAIRMAN. Provided——

Mr. LAFFERTY. Provided the bank can show to the satisfaction of the Alien Property Custodian that it has been honest, notwithstanding the common reports in Germany that it has not dealt fairly. You reported the bill in regard to the San Francisco earthquake sufferers and you put in just exactly such a provision, that no German insurance company should have its millions back——

The CHAIRMAN. I thought there was something in the position you took. All I want to do is to learn whether that was right or not.

Mr. LAFFERTY. I thank you, Mr. Chairman. I do not ask that the custodian pay to my clients in Germany anything to reimburse them for the shares, but the Germans have this safeguard, to require the German banks to show the books, and show they have been on the square with their customers.

The CHAIRMAN. If I were the custodian in a matter of this kind I would compel them to do it.

Mr. LAFFERTY. I think it is proper.

The CHAIRMAN. I did not want you to evade it at all. I thought there was actual merit in the proposition.

AMENDMENT REQUIRING CERTAIN PAYMENTS

Mr. LAFFERTY. I would like to propose the following additional amendment to come at end of the bill as section 19:

That notwithstanding any other provision in this act, no money or other property shall be returned to any former enemy hereunder, whose business transactions, acts, or obligations shall have resulted in the allowance of an award in favor of an American citizen before the Mixed Claims Commission, United States and Germany, until there shall have been deducted from the money or property of such claimant a sufficient amount to pay such award, and the Alien Property Custodian, under such rules and regulations as the President may prescribe, is hereby authorized to determine the facts and pay any such award out of the custodianized funds of any claimant, and when any such payment of an award is made by the Alien Property Custodian under this section, the amount thereof shall be deducted from the sum which otherwise would be first payable to the German owner out of whose funds such payment was made.

The CHAIRMAN. That is a declaration as to what the Alien Property Custodian would do anyhow, is it not?

Mr. LAFFERTY. No; that is not a declaration. The four big German banks have about $35,000,000 of credits over here custodianized. Under the law as it stands they would get their 80 per cent back tomorrow if the bill passes, without any let or hindrance, notwithstanding the fact that the corresponding credits or balances which the American banks had in these four big banks have been transmuted into judgments against the German people before the Mixed Claims Commission.

Before the war it was customary in international banking, and is yet, for the German bank to maintain large credit balances on the books of the American banks and certain deposits and securities to guarantee the credit, and vice versa. We seized under the alien property act the credits and securities of these four big German banks, the Deutsche Bank, the Dresdner Bank, the Disconto Gesellshaft, and the Berliner Handelsgesellshaft. They have over here altogether about $35,000,000. Now, I do not feel that they should have their money back, all of it, and without the money that they owed to the

American banks, corresponding money which they owed the American banks and which has now been transmuted into judgments against the German taxpayers before the Mixed Claims Commission, being paid directly out of their own funds.

Perhaps I can make myself clear in this way: In 1923, which was several years after the war officially ended, there had been no adjustment of these debts which were owed by German banks to the American banks, and the mark had been going down from the end of the war, from the date of the armistice, until in 1923 it went down to zero. The old mark went down to nothing. These large German banks paid off all their old depositors in Germany with a wave of the hand. That is neither here nor there, but that is what they did. I have been in Germany four times in my life, twice before the war and twice since the war, and there is nobody that likes the German common people any more than I do, but I know what the common people of Germany say about these things.

When those big German banks paid off their own clients and customers and deposit holders in 1923 with a wave of the hand, they said to them, in effect, "Our marks have all gone down, our credits have been wiped out by this inflation also; everybody has lost; you can open a new account next month under the new financial system, but the old accounts are hereby wiped out." In effect they made that same statement to the Guaranty Trust Co. of New York and the Equitable Trust Co., and other American banks: "We owe you so many marks; we will ship you over a cargo of marks if you want us to." But, of course, the American banks said, "We will not take your marks." They said, "That is all we will pay you." So the Amercian banks came down to Washington in 1924 and went before the Mixed Claims Commission and said, "Gentlemen, we had balances over in these big German banks and they offer now to pay us off in worthless paper. We feel that we have been damaged and we want judgments for damage awards against the German Government."

The American agent, Mr. Boyninge, who was a very able man, and Mr. von Lewinski, a very able man, said to them, "If you had collected right after the war you would have gotten quite a bit on your accounts." Marks were not below zero then; they were worth 12 cents, or worth something, but some of this damage or inflation or depreciation has happened since the war. They could not be war damages. "There is some doubt," they said, "about your right to recover"; but the testimony of Mr. Boyninge and another gentleman here, not Mr. von Lewinski, shows that it was then agreed over here before the Mixed Claims Commission between the German agent and the American agent, with the assent of the German Government, that those moneys owing by the German banks to the American banks should be valorized at 16 or 17 cents per mark and should be entered up as American awards against the German Government, which means the German taxpayer.

I am told that there are about $10,000,000 of such judgments over here, judgments of American banks against the German Government for depreciation of mark accounts in these same four big banks that are going to get $35,000,000 back by this bill.

Now, you are talking 20 per cent of the capital of my clients to pay those awards to the Guaranty Trust Co. and the Equitable

Trust Co., and I have suggested here that you take it out of the pockets of the four banks that were responsible for it. That is the way it reads:

That notwithstanding any other provision in this act, no money or other property shall be returned to any former enemy hereunder, whose business transactions, acts, or obligations shall have resulted in the allowance of an award in favor of an American citizen before the Mixed Claims Commission, United States and Germany, until there shall have been deducted from the money or property of such claimant a sufficient amount to pay such award.

That would mean that these four big banks instead of getting back $35,000,000 under this bill would only get back $25,000,000, and it would reduce the amount of the awards of the Mixed Claims Commission which are being paid in part out of the pockets of my clients.

Furthermore, when these big German banks paid off their own customers in 1923 with a wave of the hand, they said their marks had evaporated in the inflation, but here was $35,000,000 of credits which were snugly tucked away on the books of the Alien Property Custodian and which did not go into that adjustment in 1923. Under the analogies of a bankrupt where a bankrupt settles with his creditors on the theory that he is offering everybody everything that he has got and the court discovers later that he has something tucked away in some secure place, when he gets it back the court requires him to pay it over to his creditors. You can go to the extent of making those four big banks pay their debts to the American banks. When you do that you are doing nothing more than you have already done to American claimants here in this little paragraph on page 20.

Now, I want to say again, in order to make myself clear, that I am not proposing anything radical here. Here is the language of the House bill on page 20, which is the converse as applied to American nationals:

(g) There shall be deducted from the amounts first payable under this section to any American national in respect of any debt, the amount, if any, paid by the Alien Property Custodian in respect of such debt which was not credited by the Mixed Claims Commission in making its award.

My proposition is the very converse of that.

"UNDISCLOSED ENEMY" TRUSTS

On page 24 of this bill is subsection (d), I propose to strike out, beginning in line 8, with the words "no claim to which is filed with the Alien Property Custodian," etc., down to the end of subsection (d), and insert the following language:

which is owned by any former enemy who, prior to January 1, 1928, failed to disclose his or its identity to the Alien Property Custodian, in respect of the following so-called enemy accounts on the books of the Alien Property Custodian, to wit, trust account No. 9322, undisclosed enemy No. 1, approximate amount, $5,075,951.78; trust account No. 21815, undisclosed enemy No. 2, approximate amount $256,789.25; trust account No. 46626, undisclosed enemy No. 3, approximate amount, $530,614.61; trust account No. 13170, undisclosed enemy No. 4, approximate amount, $296,550.15; trust account No. 40497, undisclosed enemy No. 5, approximate amount $121,551.10; trust account No. 40897, undisclosed enemy No. 6, approximate amount $188,299.97; trust account No. 50127, undisclosed enemy No. 7, approximate amount, $230,210.99; trust account No. 9016, undisclosed enemy No. 8, approximate amount, $35,588.56.

The eight of the accounts amount to about $7,000,000. The effect of this subsection (d) as it stands, and it refers to these eight undisposed enemy accounts of about $7,000,000, is to give those undisclosed enemies two years after the passage of this law to come forward and make claim for that $7,000,000. My amendment proposes that if they have not disclosed their identity up to January 1, 1928, those $7,000,000 should be put into the special deposit account, which would let those undisclosed gentlemen or corporations go to the German Government for their particular items.

I see that there is already a provision in the bill, on page 28, comparable to this provision. On page 28, beginning with line 20, you have this language, which prohibits any American creditor of a German from presenting any claim after the date of the passage of this bill:

(b) Subsection (e) of section 9 of the trading with the enemy acts, as amended, is amended by striking out the period at the end thereof and inserting a semicolon and the following: "Nor shall a debt be allowed under this section unless notice of the claim has been filed, or application therefor has been made, prior to the date of the enactment of the settlement of war claims act of 1928."

So that any American creditor of any German debtor under the bill as it now stands is estopped from the date of the passage of the bill from asserting any further claim, but here in the other clause to which I am objecting, and to which if my amendment is agreed to would put $7,000,000 in the special account, which would not have to come out of the pockets of my clients, merely relates to those eight undisclosed enemy accounts. What is the common sense of it? There are only eight accounts. They are standing in the names of undisclosed enemies since 1918 when the war closed. For 10 years they have not come forward to claim any part of the money or to even give their names to the custodian. Someone here in Washington evidently knows who they are and he ought to tell who they are to the committee, and if these accounts belong to the Imperial German Government that $7,000,000 would immediately be put by this committee into the special deposit account.

There are many other things that I would like to mention, but I will pass them over, because, Mr. Chairman, you have been so good to me.

I wish to say in conclusion that I am in favor of the passage of the bill; I want the bill passed and so do my clients. We want these amendments considered so we will get at least 80 per cent of our capital back and interest-bearing certificates for everything held back, and if we get that we are satisfied.

I thank you, Mr. Chairman.

The CHAIRMAN. Mr. Le Fevre, I believe you wish to make a statement.

STATEMENT OF CHARLES H. LE FEVRE, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. LE FEVRE. Mr. Chairman, my name is Charles H. Le Fevre. I am an attorney at law and member of the bar of the District of Columbia and reside in Washington. Mr. Lafferty mentioned my name in the course of his remarks, and I merely want to make a short statement in order to give the true facts on the record.

I was an attorney in the office of the Alien Property Custodian during the war, and I was requested as an attorney in that office to consider the demand from the United States Government as to the amount fixed as the value of the German ships. I never conferred with Mr. Lansing on the subject; I never spoke to him about it. The demands had to be made against the United States Government, as the United States Government had gotten the use of the ship, and any compensation from the ships was coming from the United States Government. The demands when prepared were taken over and submitted to the Attorney General and he thought that it would not be wise to serve those demands on whoever it was necessary to serve them on, whether the President of the United States or whoever it was; and the demands were never served because the Attorney General thought it was not the best policy for the Government to pursue.

The CHAIRMAN. What year was this?

Mr. LE FEVRE. This was during the war while demands were being made for enemy property. Mr. Lafferty said that I have been since an attorney for the North German Lloyd. I take this opportunity not only to correct the record but to let every one who is here within hearing know that I have not represented the North German Lloyd in the matter of prosecuting its claims for these ships. I have represented the North German Lloyd in one particular instance with reference to its claims for its property, and that is after the Winslow Act was passed I filed a claim for the North German Lloyd for the release of $10,000 out of its trust, collected that $10,000, and turned it over to my client, and that is the only way in which I have represented the North German Lloyd up to this time with reference to any of its properties that were taken during the war.

The CHAIRMAN. The committee will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 4.45 o'clock p. m., the committee adjourned to 10 o'clock a. m., Tuesday, January 24, 1928.)


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RETURN OF ALIEN PROPERTY

TUESDAY, JANUARY 24, 1928

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 o'clock a. m., in the room of the Committee on Finance, Senate Office Building, Senator Reed Smoot, chairman, presiding.

Present: Senators Smoot (chairman), McLean, Curtis, Reed of Pennsylvania, Shortridge, Edge, Couzens, Fess, Greene, Deneen, Thomas, Gerry, Harrison, King, Bayard, Walsh of Massachusetts, and Barkley.

The CHAIRMAN. If the committee will come to order, we will proceed with the hearings.

Is Mr. Charles H. Butler here?

(No response.)

Mr. Hunt, the committee will hear you now. We hope that you will get through in the 30 minutes allotted.

STATEMENT OF EDGAR W. HUNT, TRENTON, N. J., REPRESENTING GERMAN SHIPOWNERS

The CHAIRMAN. I understand that you represent all of the shipowners?

Mr. HUNT. By common consent I speak for all the shipowners; yes. Mr. Devoe, who is also present, represents the Hamburg-American Line. Mr. Katz represents a large munber of the smaller lines.

The CHAIRMAN. But you are to speak for all of them?

Mr. HUNT. Yes.

Mr. Chairman and gentlemen of the committee, what I desire to speak upon primarily, and I shall be very brief with it, is the value of these ships. I should be glad if I might be permitted to refer only briefly to Mr. Armstrong's statement. That gentleman admitted yesterday that at the present time he represents nobody. He had appeared in April, 1926, before the joint subcommittee of the two great committees of the House to speak on H. R. 10820, which was then pending, and at page 275 of the record of that hearing he said that he was representing the son of a woman who had been lost in the *Lusitania* sinking, and represented the owner of a mark deposit in a German bank. He did not state the amount of the claim of either of his clients.

I have been unable to ascertain that he represented any interest that had a judgment from the Mixed Claims Commission in excess of $100,000.

The CHAIRMAN. I would not waste time on that.

Senator KING. Supposing he does not; I think it is to his credit, if he thinks an injustice is being perpetrated in this bill against the United States Government, to come here and present his views. I think your criticism is wholly without merit.

Mr. HUNT. All right, sir. I wondered why he should oppose a bill that would have paid in full his two clients who have claims of less than $100,000 each.

In a brief filed with the committee he criticized figures which I had given before the Ways and Means Committee concerning the sales prices of 44 German ships.

Perhaps I should not ask for time to speak to that question, simply for the reason that it seems to have been charged that I had misled Chairman Green of the Ways and Means Committee. You should, however, permit me to speak to it, because of its bearing upon the meritorious question at issue here; that is, the price at which certain of these ships were actually sold by the Shipping Board.

Mr. Devoe and I have prepared a short memorandum of the ships in detail, with the valuation of each of those ships, in regard to which Mr. Comptroller General McCarl stated a lower value than I have stated.

The CHAIRMAN. You will furnish your brief to the committee?

Mr. HUNT. Yes, sir; I will furnish my brief to the committee, and with your permission I will refer to only a few of the cases.

I have before me two volumes which we refer to in our memorandum, for shortness, as A and B, to state the titles only once. A is "Hearings before the Select Committee to Inquire into the Operations, Policies, and Affairs of the United States Shipping Board and the United States Emergency Fleet Corporation, House of Representatives, Sixty-eighth Congress, first session, pursuant to House Resolution 186," B is "Joint hearings before the Committee on Commerce, United States Senate, and Committee on the Merchant Marine and Fisheries, House of Representatives, Sixty-seventh Congress, second session, on bills S. 3217 and H. R. 10644 to amend and supplement the merchant marine act of 1920; part 34."

I can leave with the committee this volume B. Volume A is the property of a lawyer in Washington who tells me that it is no longer replaceable and strictly requires me to return it to him; but I beg the committee's permission, after I have finished here, to have the clerk check my memorandum with this volume so that he can inform the committee whether my extracts are correct.

The CHAIRMAN. That will be done.

(It was done after the close of Mr. Hunt's remarks.)

Mr. HUNT. The first steamer set forth in the list of errors that Mr. Armstrong says were made illustrates perfectly the reason for discrepancies between Mr. McCarl's figures and our figures. Mr. McCarl was an auditor and he dealt with cash received. We were seeking the sales price or value of steamers as demonstrated by sales price, and we dealt with the contract prices.

On the sailing vessel *Arnoldus Vinnen*, sold as the *Chillicothe*, the United States Government having changed her name, my figure was $192,500. The Comptroller General's figure was $48,125.

This volume A, at page 2238, list 1, states that this vessel was sold—that is the Shipping Board's official report—to Victor S. Fox at a sale price of $192,500, with an initial cash payment of $48,125 and the balance in notes in six semiannual installments. There was $48,125 received, and that is what Mr. McCarl sets down. That is all the purchaser paid. He failed, became insolvent, and did not pay any more.

Senator KING. You are making this argument for the purpose of basing the conclusion thereon that the naval board which made the appraisal did not appraise the ships high enough?

Mr. HUNT. The naval appraisement was too low, sir. That is my point, exactly. I am trying to support that point by this argument.

Senator CURTIS. Did the Government take the ship back that you referred to?

Mr. HUNT. There is no record that I have been able to discover that shows whether it did or not, sir. As to several of these others, it did. I will refer to one or two of them in a moment.

Reference was made by Mr. Armstrong yesterday to the steamer *Setos*. Her name was changed to *Commercial Trader* and then changed again to *Honolulu*; and in this volume A, at page 2099, the Shipping Board reports her sale for $975,000 on a deferred purchase plan.

Mr. Armstrong said yesterday that there was a clause in the sales agreement called the pioneer purchase clause under which an adjustment was afterwards made. There he is somewhat mistaken.

The so-called pioneer purchase settlement clause was not incorporated in the agreement or the bill of sale, because they were all conveyed by bills of sale, of any of these steamers.

The so-called pioneer purchasers, as the board came to call them were persons who bought tonnage from the board just as soon as the board was willing to release its grip on ships because of the war emergency being over; that is to say, 1919.

In 1919 the value of tonnage stood as high, approximately, as it had stood at any time during the war. These people came along and bought ships at enormous prices.

In 1920, after the middle of the year—let me say, beginning about the 1st of September—the freight market, as the shipping people call it—that is, the rate that you can get for carrying cargo overseas—began to go down, and after two or three months of weakness it began to go down very fast.

In 1920 or 1921, six months or eight months later, the British shipping control which previously had retained in its possession and ownership that enormous mass of German cargo steamers which had been surrendered to the reparations pool under the treaty of Versailles, disposing of them slowly at prices that compared reasonably with current market prices for world tonnage—late in 1920 that British shipping control suddenly "took off the lid" or "opened the gate" or however the thing should be expressed, and put the German surrendered tonnage on the market for whatever it would bring—4 pounds a ton, 5 pounds a ton, 3 pounds a ton—and that completed

the disaster that had already commenced, and ships became a complete drug on the market, worth only a fraction of what they were worth in 1919 when these pioneer purchasers had bought these ships. That left the pioneer purchasers facing ruin because they had committed themselves to pay these large prices, when they could go into the world market a year and a half later and buy at a fraction of that price.

So the Shipping Board said, "We are going to make some kind of a settlement with you."

So the board made an adjustment, and perhaps not in every case, but in a majority of cases, as soon as the board had a chance to develop a policy, it followed the plan not of revising the purchase price, but let the purchase price stand. It let the purchase price, for example, of the steamer *Setos* stand at $975,000, but it said to this pioneer purchaser, "Now, you organize another company which will be your creature and under your control, or you bring in some friend and offer us 25 cents on the dollar or 50 cents on the dollar," whatever they figured the proper price in that particular case, for the mortgage and notes given on account of the purchase price of the ship, "and we will sell those securities to him at that lower price."

That is the way most of the pioneer purchase settlements were made. So that the steamer's papers to-day carry the old original price, but the mortgage was passed over to the purchaser of the ship or his nominee at a great discount.

I am going to refer very briefly to the *Prinz Eitel Friedrich*—

The CHAIRMAN. What was the name of that first vessel?

Mr. HUNT. *Arnoldus Vinnen.*

The CHAIRMAN. The Senator asked what became of it.

Mr. HUNT. I do not know, sir.

The CHAIRMAN. If I remember correctly, that was one of the boats sunk or destroyed, in the meantime; but we can find out definitely.

Mr. HUNT. Now that you mention that, I think that is true, sir. I will trace that and inform the Senator.

The CHAIRMAN. I am quite sure that that is the case.

Mr. HUNT. There were sold a number of ships which afterwards became subject to such settlements as I have described with pioneer purchasers.

I am going to refer briefly to the *Prinz Eitel Friedrich* which was referred to by Mr. Armstrong yesterday.

There were two steamers of the name of *Prinz Eitel Friedrich.* One was a boat of 4,000 gross tons belonging to the Hamburg-American Line. The other was a steamer in the Eastern trade belonging to the North German Lloyd. Contrary to Mr. Armstrong's contention as expressed yesterday, the ship referred to in my list is the larger steamer of something over 8,000 tons, belonging to the North German Lloyd.

Mr. Armstrong said that was never appraised at all, but was a war ship.

Gentlemen, she was appraised. You will find it in the Navy appraisal. She was interned, and you will find in my testimony before the House Ways and Means Committee—when I go over these notes I will give you the page—that I have set forth in my statement before that committee the Official record concerning the internment;

the facts being, briefly, that the steamer came into Newport News and was given, like all other ships, so many days in which to make repairs and sail or, as an alternative, accept internment. She elected to accept internment. (For record concerning internment see House hearings on H. R. 10820, April, 1926, foot of p. 322 et seq.)

The CHAIRMAN. What year was this?

Mr. HUNT. In the year 1915.

Her character may be in some doubt. I will not make a positive statement as to what her character was. I will say this, that——

Senator KING. You mean, as to whether she was a cargo vessel or a war vessel?

Mr. HUNT. As to whether she was naval or merchant; yes, sir.

The CHAIRMAN. Was there any activity on her after she was interned?

Mr. HUNT. No, sir.

The CHAIRMAN. Are you sure of that?

Mr. HUNT. To the best of my knowledge and belief, Senator; I never heard of any; and the order for leaving within so many days or accepting internment was delivered practically immediately on her arrival.

I will say this, that if this bill containing a clause providing for an arbitration should pass, I would insist before the arbitrator that under the circumstances that ship was not a war ship. I will not predict whether or not I should succeed in my contention.

Senator SHORTRIDGE. Were there any arms aboard?

Mr. HUNT. I was just going to come to that.

This steamer ran through the Japanese blockade of the Chinese port of Tsintau, a German possession in China at that time, and she came half way around the world and into Newport News.

She put on board, before she left Tsintau, some guns from the fort. It may be that those guns gave her a hostile character. On the other hand, as you gentlemen know, every British merchant ship, and other merchant ships a little later, were carrying guns, and it was stoutly maintained by the Allied Governments that to carry guns did not give a merchant ship the character of a naval vessel.

The facts that I have mentioned show why the proposition is in doubt and why I would contend that she was merchant and not naval. Whether I would succeed in my contention or not, I do not know.

Senator BAYARD. Is there any evidence disclosed from the transportion of these guns that they were mounted on this boat for defensive purposes?

Mr. HUNT. I can not say that I have any information upon that question. I only know she mounted guns from the fort before she left Tsintsu. For what purpose I do not know. I have never talked with anybody who was on board or any person who was responsible for having guns on board.

Those are facts that I would inquire into and use before the arbitrator if, as I now think, there is a chance for demonstrating that the steamer was simply a merchant steamer carrying guns for defense.

As to another of the three interned steamers, I would not contest the fact that she had become a naval vessel. That is the *Kronprinz Wilhelm*. I do not think you will find her in my valuation. I have no recollection of it. At any rate, I would not contest the fact

that that steamer had been pressed into the German naval service and had been a raider. She came here because the barnacles were so thick on her bottom that she could not do otherwise. She had been more than a year at sea.

The CHAIRMAN. Under whose orders did that other vessel proceed from China to Newport News?

Mr. HUNT. I do not know, sir. I think that goes to illustrate why arbitration would be proper here, rather than a legislative declaration of value.

The CHAIRMAN. You have no doubt that the order was given by an official of the German Government, have you?

Mr. HUNT. No, sir; I can not say that, because I do not know. It is quite conceivable that the order came from her owners. That was in 1915.

The CHAIRMAN. If the owners were the only ones involved, why should the owners be concerned about taking arms and munitions and guns from the island?

Mr. HUNT. No arms and munitions, Senator—guns; she mounted guns and, I presume, shells to supply those guns.

The CHAIRMAN. Certainly.

Mr. HUNT. But British shipowners and French shipowners and all other owners were mounting guns on their merchant ships for the purpose of defense.

I simply suggest these facts to show the possibility that the Germans at that time, in 1915, might have foreseen or might have thought they foresaw an opportunity for them to enter the commercial sea lanes. In other words, they might have looked forward to a naval engagement and to their breaking the allied control of the sea and therefore being able to put their merchant ships into operation, whereas before only the allied ships had been in operation. I do not know. I only suggest that as showing that there maybe a question——

The CHAIRMAN. Senator Bayard asked whether those guns were mounted. Do you know? Were they placed there to use?

Mr. HUNT. I do not think she would have carried guns as cargo. I assume that they were mounted. I do not know, but I should suppose so.

Senator KING. Let me ask you a question about the *Prinz Eitel Friedrich*. Was not that boat the subject of dispatches between the German Government and the German ambassador here in Washington?

Mr. HUNT. Never to my knowledge, Senator.

Senator KING. Was not that boat, pursuant to directions he had received from the German Government, subjected to sabotage treatment while it was interned?

Mr. HUNT. I have never heard of it, sir. I will refer to a fact that may have some bearing upon that. I do not pretend to be a repository of knowledge concerning Government records, but if you will look into it I think you will find that this steamer, which, by the way, was sold for $800,000, had expended upon her by the United States before the sale, for the purpose of reconditioning and repairs, the sum of $321.55. If it is true that that amount only was expended on the *Prinz Eitel Friedrich* for repairs, then I think that would tend

to show that the steamer was not the subject of sabotage as suggested by Senator King.

Senator SHORTRIDGE. But the purchaser might have been called upon to stand a large sum in putting her in condition. You have only stated one side of the matter.

Mr. HUNT. And yet the fact that the purchaser paid $800,000 for this ship would indicate that probably he had not had to spend a great deal; although, as you say, that question is open.

Senator BAYARD. Was this boat of a class that could be used by the Germans for war purposes?

Mr. HUNT. This boat was a passenger steamer of about 15 knots and 8,170 gross tons. What you could do with such a ship for naval purposes, I do not know. Such a ship could be a tender; it could transport troops. She could hardly be a cruiser, such as the *Lusitania* or the *Mauretania*, or the *Leviathan*, with their great speed.

Senator BAYARD. But she was susceptible of being used as part of the armament of the German Government?

Mr. HUNT. Any ship is.

Senator BAYARD. And she was.

Mr. HUNT. Yes. She was a ship of 8,170 gross tons and of 15 knots speed.

Senator BAYARD. And other ships of her class were used for that purpose?

Mr. HUNT. Will you define specifically the purpose, please? If you mean for cruiser work, no. That is perfectly ridiculous. She was too slow and too small. I do not think she would be worth anything as a weapon of defense, because any warship is faster than 15 knots. One shell would sink that middle-sized passenger steamer. An 8,000-ton ship is not very large. The *Leviathan* is 56,000 tons. The *Mauretania* is 34,000. That will give you a comparative idea of the size of an 8,000-ton ship.

Senator BAYARD. Do you know the tonnage of the *Moewe* which made so many raids?

Mr. HUNT. She was very small.

Senator BAYARD. But she was susceptible to armament and was used for that purpose?

Mr. HUNT. Yes. I know of a number of Germans, one is a friend of mine and told me the story—who were interned in Africa, in a civilian camp, who escaped and bought a small 35-ton sailing vessel and started to sail home for the purpose of joining their respective units in the German Navy or Army. They got along from the Bay of Guinea, where the Congo comes into the Atlantic—they got from there to the English Channel and almost through the channel before they were captured.

Senator REED. Is this the old Hamburg-American ship that you have been referring to?

Mr. HUNT. No, sir. The North German Lloyd. The other was a cargo boat of something over 4,000 tons. At all events, this ship was sold for $800,000—sold, by the way, by us under the name of *Mount Clay*. It was sold to the American Ship & Commerce Corporation.

I will skip over a lot of the others. But now I make an admission. I said that the *President Lincoln* was sold for $1,125,000. The gentlemen who assisted me in getting this information together are Mr.

Ewers and Mr. Duff, lawyers in Washington. They got the information for me in 1926. They had forgotten and I had forgotten what is the fact—as Mr. Armstrong said to the committee—that the *President Lincoln* of the Hamburg-American Line, seized by our Government, was sunk during the war. However, the Shipping Board built another steamer and named her *President Lincoln* and sold her for $1,125,000. Mr. Ewers picked out that sale and gave it to me. I now admit that it was a mistake.

Another of the errors pointed out by Mr. Armstrong is that I stated that the *Pongtong*, which was renamed by us the *Quinnebaug*, was sold for $76,000, where as the actual sale was only for the price of $23,000.

I am going to lay before the chairman, if I may, pages 2128 and 2129 of this volume which I described as A, and in the margin I will mark where the steamer is set down, and I will ask the chairman to say for me whether that is an innocent mistake or a guilty mistake.

Senator SHORTRIDGE. Is it a mistake?

Mr. HUNT. Yes, sir. Those two pages, 2128 and 2129 contain tabulations that run across the page, across the width of both pages, and the pages are not paralleled correctly, and when you read *Quinnebaug* on the left, you also see the figures $76,000 directly opposite on the right.

Senator KING. Then Mr. Armstrong was right?

Mr. HUNT. Yes, sir. In everything else, gentlemen, he was wrong; and these two books, A and B, are proof of it; and in this little brief is a reference to the pages of A and B where the proof is set forth.

Now I am going to point out something else to you. These errors were to my own advantage to the extent of $1,178,000. On the other hand, Mr. McCarl set up the cash received from a considerable number of sales at a higher amount than I had set up the contract prices. If you take this into account, the error in my tabulation amounts to $773,000 instead of $1,178,000.

Further—and I am not going to claim any credit for this; I missed a trick; that is all—there are two of these steamers in my list of 44 that I want to refer to—the *Wabash*, as we called it, was the *Tubingen*, and the *Wachusetts*, which was formerly the *Suevia*. The Shipping Board sold the steamers twice; and in my statement before the Ways and Means Committee I gave the figures of the second sale. That was because I had not found the first sales at that time. But on digging, in response to Mr. Armstrong's criticism, I found the earlier sales, and the *Wabash*, which I stated before the Ways and Means Committee had been sold to a foreign purchaser for $150,480, was so sold but had in fact at an earlier date been sold to an American company called the French-American Line, for $875,000, and the sale is in volume B at page 2418.

Senator SHORTRIDGE. The same vessel was sold twice?

Mr. HUNT. Yes, and the second sale at a lower price occurred only after the purchaser at the higher price had defaulted and the board had taken the steamer back.

The *Wachusetts* was a case of the same kind. The first purchaser defaulted. The board took the steamer back and sold her for $9,000, and that is the sale price that is contained in my list before the

Ways and Means Committee. But prior to that she had been sold to the French-American Line for $735,000, and the Shipping Board's report of it is in volume B at page 2418.

Senator SHORTRIDGE. Was there money paid?

Mr. HUNT. Something was paid, and notes were given for the balance. If you take those things into account the 44 steamers referred to by me were sold for a total of about $700,000 more than I originally claimed.

And now, gentlemen, I submit that in all fairness, in so far as sales prices may be considered as having any bearing on the question of the adequacy or the inadequacy of the Navy appraisal, the shipowners are entitled to the benefit of these earlier sales at higher prices which were defaulted by the purchasers. In other words, you should not prejudice the shipowners because the Shipping Board saw fit to sell to persons whose promises to pay were unenforceable, or because the board saw fit in the case of purchasers whose promises could be enforced, as, for example, the American Ship and Commeerce Co.; I think that was a perfectly solvent concern—because the board in those cases saw fit voluntarily to relieve the shipowner or purchaser from a burden which, on account of future events became unbearable and would have resulted eventually in his ruin——

Senator MCLEAN. Apparently the first sale was for a price very much above the value of the ship?

Mr. HUNT. Not necessarily, Senator. Something might have happened meanwhile.

Senator MCLEAN. There must have been something that happened in the meantime.

Mr. HUNT. Something might have happened in the meantime. I can illustrate that. I bought a ship from the Shipping Board for $100,000, and the Shipping Board had previously spent $450,000 on her. The board sent her out on a voyage, on her first and only commercial voyage, and for some reason, I do not know what—I think perhaps their engineers did not understand the operation of the ship's machinery—she was an utter failure. I bought that ship for my clients when she was lying abandoned at Gibraltar and thieves had lighters alongside stripping her of everything they could move. Six months before an expenditure of almost half a million dollars on that ship had just been completed.

Senator HARRISON. Did the Government get any insurance?

Mr. HUNT. No, sir; I think not—I think there was no insurable loss there. She broke down constantly. I do not know why. The board started her out from Boston on a voyage to the Mediterranean, and she was five months in getting from Naples to Genoa. She broke down there and was repaired at great expense and got back as far as Gibraltar and broke down again there. She had previously been used successfully as a troop transport.

In addition to these expenditures, after my client had taken the ship and repaired her, before her first sailing she was libeled by a person who had done work on her for the Shipping Board for a further claim of about $250,000.

The CHAIRMAN. What was the name of that ship?

Mr. HUNT. She was the former North German Lloyd steamer, *Princess Irene*, which the Shipping Board called the *Pocahontas*.

Gentlemen, we are also submitting, with your permission, a little brief covering the taking of the ships—saying it implied an obliga-

tion to pay compensation, and referring to the Navy appraisal and pointing out why we think that was inadequate. I will not stop to comment at length upon it.

The Navy appraisal was made as of the date August 1, 1914, the appraisers having acted under the mistaken apprehension that the ships were interned at that time. At the moment I have only one copy of this brief with me, but there will be one given you for each member of the committee. In the brief we quote the testimony given before this committee last year by Captain Robert, showing that the Navy board did act under a misapprehension as to the facts.

As to a few evidences of value, very briefly:

The mixed claims awards against Germany in payment for American tonnage sunk by German hostile action during the war average $350 per dead-weight ton, and for 10 steamers sunk during the very period when our Government was taking these, between June and September of 1917, the average is $389 per dead-weight ton.

The House bill is framed in such a manner as to require the arbitrator, if there is an arbitrator, to value these ships in the light of the fact that at the time of taking they were not free. They had been free up until the 5th day of April, 1917. We—that is, the owners—could have dispatched them at any time we pleased. They were not interned. I think there is no misunderstanding about that here. They were absolutely free.

For example, the merchant submarine *Deutschland*, belonging to my client, the North German Lloyd, made two voyages here and entered, cleared, and departed the same as any other ship.

When we declared war, then, of course, you had a right, under The Hague Convention, under the old treaties, under any recognized form of international law, to put your hand on these ships and say, "No; you can not move them until after the war is over." You did not have a right to confiscate them, but you did have a right to prevent our using them during the war, and therefore the House bill proposes to value them in the light of that fact.

But, gentlemen, $350 a ton is what we required Germany to pay for sunken American cargo ships, and practically every one of them, with possibly one or two exceptions, were cargo ships only.

The CHAIRMAN. You mean dead-weight tons?

Mr. HUNT. Yes, sir. Can you reconcile that figure with an average of $34 per ton on our freight steamers?

Senator REED. Will you permit a question?

Mr. HUNT. Yes, sir.

Senator REED. If we are to be a jury or to set up a procedure for the appraisal of those vessels, I am interested to know why that jury or arbiter ought not to take into account the fact that while the ships were theoretically free, practically they did not dare to stick their noses out of the harbor.

Mr. HUNT. You do take it into account, Senator. You do write into the bill—and I am not complaining of it, I am only pointing out that it is the fact—you write into the bill this clause that requires the valuation of the ships to be determined on the assumption—and it is a correct basis—that they were not free ships——

Senator REED. But I understood your argument to be that they were theoretically free and therefore they ought to be valued as if they dared to sail the seas.

Mr. HUNT. I say, up to the 5th of April they were theoretically free. I admit that that is theory and that facts prevented the actual use of the ships. I quite admit that. I am not seeking any change in the bill with respect to the basis of valuation. I am still addressing myself to the Navy appraisal. I say that in spite of the fact that the ships were not free, this valuation of $350 which the Mixed Claims Commission put on the sunken American tonnage shows indubtiably that a valuation of $34 per ton in the Navy appraisal is too small, because the fact of not being free certainly could not be understood by anybody to deprive a steamer of 90 per cent of its value, and that is what that amounts to.

Senator REED. That is just what I want to have clear. Is it not a fact that 90 per cent of a steamer's value at that time lay in its capacity for use during the war?

Mr. HUNT. No, sir; not by any means. On the contrary, if you will go back to the history of that time you will find that right then, at that very period, the Dutch laid up practically their entire merchant fleet rather than pay excessive insurance charges and run the risks of sinkings. They preferred to hold the ships for the value they would have when the war was over. As you will remember, our Government a little later requisitioned a lot of Dutch steamers lying in our ports whose owners refused to dispatch them, preferring that they should be idle until after the war.

And that is a great consideration in this matter—the earning value that ships would have when the war was over, when the world's tonnage had been reduced by these submarine sinkings which were taking place at the rate of 600,000 or 800,000 tons per week. Enormous freights were earned for two years or more after the armistice.

The CHAIRMAN. What was the value per ton in 1913?

Mr. HUNT. In 1913 I should say—I will not pretend to——

The CHAIRMAN. Approximately.

Mr. HUNT. Considering that two-thirds of this tonnage was fine passenger tonnage, I should say that a fair average value in 1913, based on the cost of reproduction at that time, would approach $100 per ton.

Senator REED. Per dead-weight ton?

Mr. HUNT. You can not measure a passenger ship by dead-weight tons. You measure it by gross tons, and if you want to get the relation, 1 gross ton amounts to about 1.6 dead-weight tons.

The CHAIRMAN. What is the value to-day per gross ton?

Mr. HUNT. Of these ships, you mean?

The CHAIRMAN. The same class of ships.

Mr. HUNT. The same class of ships built to-day in a German yard—I will have to divide the classes—what I might call a medium fine class of passenger ship will cost to build to-day in a German yard about $150 a gross ton. It will cost here to build it about twice as much. The finest ships cost a little over $200 per gross ton built in a German yard.

The CHAIRMAN. What would freight ships cost?

Mr. HUNT. Freight ships per ton to-day, built in a German yard, would cost probably around $100, $90 to $100. A freight ship in an English or German yard before the war cost $50 to $60.

The CHAIRMAN. I think it was less than that.

Mr. HUNT. In a certain sense you are right. There is a kind of ship that you "cut off by the yard," and you could build them for $40 before the war. Not steamers of this class, Senator. There was no tonnage in the world better than this German tonnage.

Senator MCLEAN. What did it cost to build a freight ship here?

Senator SHORTRIDGE. Of like type?

Mr. HUNT. I should say, Senators, it would probably cost $150 or $160. I think so. I do not pretend to be an expert on that. I am only telling you the ideas that I get for my conversations with shipping people of all kinds.

I think this is an appropriate time to refer to another fact that I feel has a bearing on this question of value.

This is 1928. In a few days there will be a bill over here before you, because it is now in the House and it is said to be likely to pass, authorizing the Shipping Board to expend $10,000,000 of money belonging to the United States Government for the reconditioning of two ex-North German Lloyd steamers, now called respectively *Agamemnon* and *Mount Vernon*. Those are 19,361 and 19,503 gross tons, respectively—in round figures, 40,000 gross tons. And on those two old hulls the Shipping Board strongly recommends expending $10,000,000. That is why Congress is doing it.

Senator SHORTRIDGE. It has not done it yet.

Mr. HUNT. I mean, that is why it is in Congress.

Senator KING. Is it not prima facie evidence of the unwisdom of it if it is recommended by the Shipping Board?

Mr. HUNT. I can not say that, Senator. I have to deal with the Shipping Board sometimes.

The Shipping Board has recommended that you authorize them to spend $250 a ton on those old hulls. The *Kaiser Wilhelm II*, now the *Agamemnon*, and the *Crown Princess Cecilie*, now the *Mount Vernon*, were built in 1904 and 1907, respectively, if my recollection is correct. I submit that as a recommendation of the quality of the German-built hull.

The CHAIRMAN. It is a case of either wasting what we have, entirely or else spending money to make something out of them.

Mr. HUNT. A new ship of the same kind can be produced for less money abroad—that is our trouble here.

Senator KING. They could build ships of the character of the *Agamemnon* and *Mount Vernon* in Great Britain or Germany, or build them here, if properly supervised, for a great deal less than they are proposing to spend on them.

Mr. HUNT. Just a few more valuations. The United States Government paid for the Dutch ships that were requisitioned here and paid for the Norwegian hulls and contracts figures representing approximately $350 per gross ton. I will not bother you with the details of it now.

I refer once more to the Mixed Claims Commission awards. That is a judicial ascertainment of the amount that Germany has to pay for sunken tonnage, and I submit, gentlemen, that against a judicial ascertainment of the value of $350 a ton it would not be fair to set up a legislative declaration of value of $34 a ton.

Lastly, on this point—and afterwards there are two or three little things that I want to mention—this will seem to you a very strange statement to be made in 1928, but I am going to prove to

you that you can pay $100,000,000 for these ships—as a matter of fact, with the radios and patents in we will not get $100,000,000, but we will get the major part of it—and still be richer than if you had not taken them. Mr. Katz, representing a number of German lines, has referred in his letter to charter-hire rates. And what he says about charter-hire rates is absolutely true. I said the same thing myself a year or two ago in the House. However, I am going to give you figures which I think are more conservative. He built up his calculation on the charter-hire rates that obtained in this country in the open chartering market in the summer of 1917.

On the 12th of October, 1917, the Shipping Board issued a general requisition order in whch it set forth the rates which it would pay for all ships that it might thereafter charter, and took to itself the right to requisition and have in its own hands as charterer any ship that it pleased.

In my opinion we must admit that that changed the free chartering market, and we could expect to have no higher rate than that provided. The board classified ships into a number of classifications. The only fair classifications for me to use would be the cargo and passenger, respectively, on the bareboat charter basis. I think I need not explain the difference between bareboat and time form. I think you understand it. Bareboat would have been the case for us because you would not have let us put crews on or provide the ships, and all that.

This requisition order of the Shipping Board is printed in No. 34 of the joint hearings before the Committee on Commerce and the Committee on Merchant Marine and Fisheries, considering Senate bill 3717—the same book that I describe by the letter "B" in referring to values.

The bareboat rate established by the board from and after October 12, 1917, for cargo boats up to 11 knots was $4.15 per dead-weight ton per month, with an additional 50 cents for every additional knot up to 16 knots.

For passenger boats with a capacity of more than 150 passengers—and that would include practically all these passenger boats—the minimum rate was $5.75 per gross ton, for passenger ships up to 11 knots speed, and 50 cents additional for each additional knot up to 16 knots.

Of the 640,000 tons seized here approximately one-third were cargo—as a matter of fact, a little less than one-third—and two-thirds passenger ships. Say, 213,000 tons cargo and 427,000 tons passenger ships.

I have set it down, and I think you will find it sustainable, that the average speed of the cargo boats may be estimated at 11 knots. At any rate, it makes no difference, because the Shipping Board's minimum rate applies to boats up to 11 knots; 213,000 tons of cargo ships at the minimum rate of $4.15 is $883,950 per month; 427,000 tons of passenger ships at $5.75, the minimum rate, plus $1.50 additional for an average speed of 14 knots, or $7.25, is $3,095,750 per month.

Senator REED. Do you think that that ought to be taken as the measure of value of these ships?

Mr. HUNT. No, sir. I address it simply to the question of whether the naval appraisal was adequate. If these ships were worth these

charter hire rates, then you can not very well say that $34 is a proper valuation.

Senator REED. You are familiar with the experience of some of the American companies whose ships were taken and who tried to get compensation on the basis of the bareboat charter rate; are you not?

Mr. HUNT. Senator, I do not know of any American company that failed to get compensation on a more liberal basis than this.

Senator REED. I represented one company that had had six vessels commandeered, and the Court of Claims declined to allow anything like that much for compensation.

Mr. HUNT. The Supreme Court reversed the Court of Claims in one set of cases. The principle involved in them was that the Court of Claims had failed to allow market value, and the Supreme Court sent it right back. There is the Seaboard Air Line case and the coal company case—all those cases that arose during the war, evoking the declaration that market value of date of taking had to be paid.

Senator REED. At the same time, they refused to consider these bareboat charter rates as evidence of value.

My point is that certainly if Americans could not get that for their ships it would be a little doubtful whether the Germans were entitled to it.

Mr. HUNT. I am going to show you in a moment that you actually employed so many tons, or practically 90 per cent, of all these ships during this period, and that therefore, in fairness, you should consider that your own fixed rate should be applied, no matter what the court has said.

If the Shipping Board said, "I am going to pay $5 per ton per month for a ship," and they use my ship, there is no need for a court to interpose, is there, if I am willing to take the Shipping Board at its word? However, I do not stand upon this as a substantive matter, but only as cumulative evidence.

Senator WALSH. Have you offered the amendment you propose to present to the committee?

Mr. HUNT. I am not proposing any amendment at all, sir.

The CHAIRMAN. He is supporting the House bill.

Mr. HUNT. I am supporting the House bill with the arbitration clause. I say that we think there should be a judicial determination by an arbitrator rather than a legislative declaration of value.

Senator KING. If it should go to arbitration, do you not think that evidence should be taken tending to show that these ships were under the control of the German Government when interned and during the period prior to internment and after they came into our harbors, and also evidence which might show that the German Government directed Mr. Bernstorff, the ambassador, what to do; that the German Government directed him to commit sabotage upon those boats; that upon some of these boats, perhaps, bombs were manufactured for the purpose of destroying munition plants of the Government of the United States? Do you not think that evidence of that character ought to be admissible, if there is evidence of that character?

Mr. HUNT. You are indulging in some pretty broad assumptions there, Senator. I am not prepared to say that any one of the assumptions that you have stated is a correct assumption.

Senator SHORTRIDGE. Assuming it to be correct, though?

Mr. HUNT. Then I should assume that the United States Government would put it before the arbitrator, just as they will put the Navy appraisal before the arbitrator. Anything that has a bearing on the question will be evidence before the arbitrator.

Senator SHORTRIDGE. Would it be competent evidence which they ought to consider?

Mr. HUNT. I should think so.

Senator KING. It would not be competent under the language of the House bill, would it?

Mr. HUNT. I think so, Senator. The language of the House bill is that an arbiter shall be appointed to determine the value of any merchant ship owned by any German national. I am not quoting that literally—but is not that the substance of it? I have got to come in for my company as plaintiff before the arbiter, and I have got to sustain the burden of proof and show that my company owned, for example, this doubtful ship, the *Prinz Eitel Friedrich*, and that she was a merchant ship. I have told you already that there may be a doubt about that particular one—not all of them. The Government would come in and combat anything that I say and the arbiter might rule that ship out. I have mentioned before the House committee a little steamer that came into Honolulu shortly after war broke out, and the British authorities reported to the American authorities that she had given coal to a German cruiser at sea.

"All right," said our people, "interne or leave within so many hours."

She interned. Whether that is true or not, that she did furnish coal to a German cruiser, I do not know. That would be a question for investigation before the arbiter.

Senator BAYARD. Assuming you go before the arbiter, would you oject to the Federal Government's presenting evidence tending to show that these boats were part of the national German armament?

Mr. HUNT. I should not think that evidence of that kind would have any bearing on the question.

Senator BAYARD. You would interpose an objection?

Mr. HUNT. I certainly would.

Senator BAYARD. On what ground?

Mr. HUNT. On this ground, that every ship in the world is, in a broad sense, a part of the armament of its country. That is why Congress wants to have American merchant ships, so that you have passenger ships to convert into cruisers in time of war. Every ship in the world is subject to be taken into its country's service as a naval ship whenever the country desires.

The question as to the character of the ship does not depend at all on that fact. That fact has no bearing on it whatever. It depends on whether the government has put out its hand and taken that ship. If it has, then it is not a privately-owned merchant ship any longer. If it has not, it retains absolutely its private merchant character.

Is not that sound?

Senator KING. If the German ambassador were giving orders during the period of the internment here with respect to how the ships should be controlled, and directed those who were in charge of them by directions of the German government.

Mr. HUNT. I can not imagine the German ambassador doing any such thing. The ships were there in the possession of their own captains and in the possession of their own crews, and with the port superintendent acting as general supervisor. The ambassador did not come along and tell us that we had to keep up enough steam aboard to keep the pipes in the ship from freezing and in order to supply the crew with hot water for washing and cooking purposes; and he did not tell us what provisions we should buy. That was done at our expense, and a very great expense it was.

Senator BAYARD. He did tell you to injure them, did he not?

Mr. HUNT. Not so far as I know.

Senator BAYARD. He says so in his book.

Mr. HUNT. I have not read his book.

Senator KING. It is called "My Three Years in America." In this book he recounts the incidents during the time he was German ambassador to the United States. In this book he refers to the matter of disabling German ships by order of his Government, as follows:

On January 31 at 5 o'clock in the afternoon——

Senator MCLEAN. What year?

Senator KING. I think, 1917—

I handed Mr. Lansing the official communication about the U-boat war. This was my last political interview in America. We both knew that the end had come, but we did not admit the fact to each other. The Secretary of State contented himself with replying that he would submit my communication to the President. I cherished no illusions regarding the expected outcome of this interview, for the ultimatum of April 18, 1916, no longer allowed of any chance of preventing the rupture of diplomatic relations. Consequently, on the morning of the 31st of January I had already given the order that the engines of all ships lying in American harbors were to be destroyed. I had already been given instructions to this effect at the time of the *Sussex* crisis, and these instructions had now been repeated from Berlin. As a matter of fact it was dangerous to allow of any delay, for on the evening of January 31 our ships were already seized by the American police. As far as I know, however, all of them, without exception, were made unfit for use before this occurred.

Mr. HUNT. Senator, the Ambassador is not here. May I refer to what you read, for a moment?

Senator KING. I think there is a good deal of evidence to support that.

Mr. HUNT. We are all familiar with the old axiom about travelers' tales, and I think that I will broaden it to include ambassadors' tales. I do not know anything about the whole of this story. I do not know anything about his giving any orders to destroy any machinery, but I do know that two assertions here are untrue, ambassador or no ambassador. [Reading:]

On the evening of January 31, our ships were already seized by the American police.

That is absolutely untrue. Nobody ever disturbed our possession of these ships until the 6th day of April, 1917, about 2 o'clock in the morning.

Mr. Devoe, will you please hunt out the page of my statement before the House committee? That states it all at length, and correctly.

Mr. E. W. Camp, from the Treasury Department, was called before the committee of the House in secret session and he put in evidence all the telegrams outward from the Treasury Department to the col-

lectors at every port and, in return, from the collectors, reporting what they had done.

I am going to make one exception. Our steamer *Kronprinzessin Cecilie* was in the hands of the court in Boston, because she had been arrested by the Guaranty Trust Co. in a big lawsuit (a civil suit) for $5,000,000, and the trust company, through application to the court, required us to put up such an enormous bond that we could not put it up—many millions of dollars, and we said to the marshal, "Please take her," and he put a couple of guards on board, whose wages we paid. This was in 1914 or 1915.

With that exception, and of course with the exception of these three interned ships, no officer of the Federal Government, no officer of any State government and no officer of any municipal government had ever laid a finger on one of our ships or interferred with her in any way, form or manner whatsoever. Therefore I say that in that respect, at least, the ambassador's narrative is not correct.

Senator BAYARD. It is a matter of fact that sabotage was committed on those ships before they were taken?

Mr. HUNT. It is a matter of fact that the machinery of some, but not all of those ships, was damaged. Captain Robert ought to know about it, and that is what he said about it.

Senator BAYARD. You know that it was done by the Germans, do you not?

Mr. HUNT. I have no doubt that it was done by the crew. I do not know.

Senator BAYARD. The officers and crew together.

Mr. HUNT. All right—the crews, with the knowledge and under the direction of some officer.

Senator REED. Do you attach any significance to the fact that all of them were injured in the same way, by having a V-shape piece cut out of their low-pressure cylinders? That indicates that it was done under orders, does it not?

Mr. HUNT. Captain Robert said that was done in a number of cases, but not in every case; and he said, and others, I think, have said before you, that on some ships no damage was done at all. Somebody is on record before one of these committees, and I think it was this committee, last year, to the effect that the *Leviathan* or the *Vaterland* was not damaged at all. Did not somebody say that last year?

Senator REED. I think it is the fact, whether it was testified to or not.

Mr. HUNT. There is another thing that I wish to make a comment on. "Engines destroyed" is the phrase that the ambassador uses in his memoirs. Were the engines destroyed? Captain Robert spoke about that at page 331 of your hearings last winter. Senator McLean asked Captain Robert:

> In many cases the wrecked part represented a very large percentage of the value of the ship?
>
> Captain ROBERT. No, sir; a comparatively small proportion. As a matter of fact, the value of a ship as we determined it, was not very much reduced by this, because naturally this was of comparatively small value.

Here is Mr. Camp's testimony, from the Treasury Department, in the House hearings on H. R. 10820, in April, 1926, at page 209. He sets out in detail the official record of the Treasury Department in

connection with the internment of these ships which took place on the 6th day of April, 1917; the telegram instructing it having been sent by the Treasury Department on April 5, 1917, and my full explanation of what took place at the Hoboken Piers is contained in this same volume.

The CHAIRMAN. Do you want to refer to what was said? I mean to Camp's testimony, which begins at page 209.

Mr. HUNT. I will just briefly characterize it and not read from it.

The CHAIRMAN. We can refer to it.

Senator MCLEAN. He gave an estimate of the total cost of the repairs that were made necessary by the injury which these ships received, which was put into the testimony last year.

Mr. HUNT. Not that I know of, Senator. That is something that I have tried to get for the last five years and I have never been able to get a word of information upon it.

The CHAIRMAN. Mr. Camp was director of customs at the time he made this statement.

Mr. HUNT. May I say this in that connection? This Government spent money on those ships for three purposes, but only one of those purposes—the one, I venture to say, that required the least expenditure—is properly chargeable against the value of the ships at the time of taking. We spent money to repair any damage that might have been done by the owners before the taking. We spent money on one ship and another to fit it for another purpose than the purpose for which it had been designed. For instance, to turn a fine passenger ship into a transport. Then after the war was over we spent money to restore the ship to its original condition or to such other merchant use to which we might want to put it. For example, we spent around $10,000,000 on the *Leviathan* after her service as a transport was over. That is not chargeable against the capital value of the ship at the time of seizure. It was spent to restore her from a troop ship to a passenger ship after the war was over.

Senator MCLEAN. Would it not be possible to make a fair estimate of the damage?

Mr. HUNT. I should think the Navy Department should be able to tell you just what they paid for those repairs; and my idea of the application of that whole matter to this situation, is that the value of those ships ought to be reduced by the arbitrator, by an amount covering the damage done by the crews. And the cost to the United States of repairing that damage would be proper evidence of what the damage was.

Senator REED of Pennsylvania. Including the damage to the occupancy during the time they were under repairs?

Mr. HUNT. That does not come in, Senator. We are to be paid only the value at time of taking, and not any charter hire value. So you are not entitled to a deduction for loss of use during repairs.

The CHAIRMAN. Is that all?

Mr. HUNT. I would like just a few minutes more.

The CHAIRMAN. We must make haste in this matter. You are now more than 10 minutes past the time.

Mr. HUNT. Senator, yesterday some doubts arose here, and I think I will be able to straighten those matters out if given a little time. The figures, Mr. Mondell gave here yesterday assumed that all the claims now pending before the Mixed Claims Commission

would be decided in favor of the claimants. All the estimates put before you assumed they would be so decided.

Second, the claims secured by pledge of the German property under the treaty of Berlin are private claims only, and not Government claims.

Third, the United States Government claims include about $17,000,000 gross profit from war risk insurance.

I take that from the war-risk insurance decision—the oipnion in the war-risk insurance claims case written by Judge Parker as the umpire of the Mixed Claims Commission. He sets out the claims in three periods—September, 1914, to April 1, 1917; April 1, 1917, to December 1, 1918, or within the war period; and then December 31, 1918, to December 31, 1922.

To save time I will give only the totals. During that time our Government wrote 27,227 policies for an aggregate amount of $2,067,273,000 (I will disregard the cents) and collected premiums of $46,740,404; and it paid 699 losses of a total sum of $29,330,805; so their gross profit, the gross profit from this operation, was $17,409,499. I do not know what the interest accruing on those enormous sums of premium moneys always in their hands was, but I suggest that it would go a considerable way toward paying the expenses of the underwriting.

Senator BAYARD. And the net profit was $17,000,000?

Mr. HUNT. The gross profit was.

Senator BAYARD. The net.

Mr. HUNT. I can not imagine that——

Senator BAYARD (interposing). Let me read to you, Mr. Hunt, a speech made by Congressman Mills, delivered on Thursday, December 3, 1926 (reading:)

> Now, this should be known: The United States is not out of pocket to the extent of one cent by reason of these claims. They arise mostly from ships sunk; and, in so far as ships that were insured by the War Risk Insurance Bureau are concerned, the War Risk Insurance Bureau shows a profit of $17,000,000 after all payments. So far as other ships lost are concerned, their value is $16,000,000; so that if we apply to them the profits, the $17,000,000 made by the War Risk Insurance Bureau, the United States Government has a net profit, as I said, of $1,000,000.

He is the proponent of this bill, and the originator of it in this form.

Mr. HUNT. Senator, I think there is a misapprehension here. Mr. Mills's statements are in line absolutely with my own. The $16,000,000 are war-ship losses, not insurable.

Senator BAYARD. They are losses——

Mr. HUNT (interposing). I am sure that Senators would not expect to charge the German Government with the losses of American war ships sunk. When you go to war you try, on both sides, to sink ships.

The CHAIRMAN. In the report of the Secretary of the Treasury, on page 115, of 1921, he showed that there was a profit of $16,617,615. The difference between that and the figure that was quoted by the witness is about a million dollars. There were a few claims that were not settled at the time he refers to. At that time the profit is shown in the report of the Secretary of the Treasury.

Mr. HUNT. Gentlemen, another point that you may regard as somewhat important—that is with reference to the reimbursement by Germany of her citizens for property losses due to confiscations in foreign countries. The official German statement in reference to

that situation is set forth on pages 282 and 284 of the House hearings on H. R. 10820. I refer to that very briefly in my memorandum, and I will read a line from that which will be in accordance with the fact.

Senator SHORTRIDGE. Well, as a matter of fact, has the German Government reimbursed or made whole her nationals for the losses you have in mind? As a fact, have they?

Mr. HUNT. It is now generally admitted that German losses are something in the neighborhood of 11,000,000,000 gold marks. The German Government has paid up to now the sum of something like $79,000,000. The exact amount is set forth in the hearings at the pages I have just referred to. The payments have been on an average of 4.10 per cent altogether. The high average comes about in this way: For property seized in America no payment was made, because the German Government has not considered that as confiscated. Four and one-tenth per cent is the average. For cash and securities lost, the payment was 2 per cent; and in all cases where the loss sustained exceeds 200,000 marks the percentage allowed was only two-tenths of 1 per cent. The shipowners were given preferential treatment, and the fact that a larger payment was made to them, ranging up to 10 per cent of the peace value of their ships, brings the average for all up to 4.1 per cent. This is so important, that with your permission I would like to read this statement.

The CHAIRMAN. Why not put the whole report in?

Mr. HUNT. I will put it in. Briefly, they say if they had not paid it they would have had to support labor with doles anyway. That is the secret of it.

(The matter referred to by Mr. Hunt is as follows:)

The reason for this special indulgence was stated by the German Government to our Government in these words:

"The shipbuilding industry in Germany was a very important one, employing many thousands of mechanics and laborers, and the general welfare was especially involved in this question for the double reason that these workmen were not well adapted to other trades and that the acquisition of ocean-going vessels to enable Germany to undertake once more an export trade—which also involved the import of raw materials for her factories—was necessary if economic life was to be revived and the country enabled to live and to look forward to the payment of reparation obligations. It was, therefore, considered advisable instead of including the ship owners in the general compensation scheme to meet their requirements for once and all by the payment of a fixed amount under the condition that the sums so granted were to be used for immediate reconstruction of at least a small part of the German merchant marine."

Concerning the American situation, the note of the German Government continued as follows:

"As far as the ships taken in American ports are concerned the situation to-day is that the former owners have not been compensated for them from any source whatsoever, and that in the event the United States makes compensation for these losses the amounts awarded would go to the former owners exclusively, the German Government having no part or share in the amounts thus paid."

Senator SHORTRIDGE. The Government has aided the ship owners, has it not?

Mr. HUNT. No, sir; I do not call it aided, Senator; they have reimbursed the ship owners to a certain extent; as I have said, we have had 10 per cent reimbursement. I do not call that reimbursement at all. The facts are, we got 10 per cent of our losses of ships elsewhere than in the United States.

Senator WALSH of Massachusetts. You were given preference?

Mr. HUNT. We got the 10 per cent, whereas no one else got as much.

Senator WALSH of Massachusetts. You mean the ship owners got 10 per cent reimbursement?

Mr. HUNT. The German ship owners, yes, sir; but not for the tonnage here.

Senator KING. I spoke yesterday of the Budget Committee of the Reichstag——

Mr. HUNT (interposing). I was coming to that, Senator.

Senator KING (continuing). Where it is stated that a billion gold marks were to be applied to the reimbursement of the German nationals.

Mr. HUNT. There was legislation to that effect introduced into the German Reichstag. Parker Gilbert interposed an objection, and you referred to it yesterday. The German Reichstag is in session now and has been in session all the time, and the legislation has not been passed or pressed. And it looks to me as if the objection of Parker Gilbert has been effective, and as if it will not be passed.

And in any event, if it had been granted, that would have been one and one-third billion marks, roughly, total reimbursement, as against eleven billion gold marks lost. And this provision of the Treaty of Versailles binds Germany as the other provisions do, and they must reimburse their citizens. But they can not reimburse them. Germany has not got the money to do it. That legislation has not passed, and I do not think that we here to-day should assume such legislation on the part of the German Government, any more than you gentlemen, a few moments ago, were willing to assume that Congress would grant $10,000,000 to recondition those two old steamers I mentioned.

Senator SHORTRIDGE. But you stated that under the Treaty of Versailles Germany was obligated to reimburse her nationals.

Mr. HUNT. Yes, sir.

Senator SHORTRIDGE. May we not assume that she will do that?

Mr. HUNT. Not with respect to these ships here, Senator. I must explain that, if I am misunderstood. The Treaty of Versailles is not in operation here, absolutely. And the German Government does not regard the ships here are confiscated.

Senator SHORTRIDGE. We had rights under it.

Mr. HUNT. We had rights under it, but——

Senator SHORTRIDGE (interposing). The Treaty says so in express terms.

Mr. HUNT. The Treaty of Versailles gave us an option that we elected not to exercise and do not any longer. If it were in effect here you would not now have the Mixed Claims Commission such as you have, but you would have an arbitrator, appointed by Mr. Gustave Ador, and the amount to be paid by Germany to us would be fixed by him as arbitrator. You have not got that situation under the Berlin Treaty. We have got a commission with two Americans on it. Does not that mark a wide difference?

Senator SHORTRIDGE. Grant it.

Mr. HUNT. We reserved rights, but we elected not to exercise those rights, but to follow our own course, and we have followed a totally different course.

Senator SHORTRIDGE. That may be so.

Mr. HUNT. Article 297 of the treaty of Versailles, I am glad to say here, is no more law in this country than is the law of the Medes and Persians—nothing whatsoever. That law means no more in this country than would a decree of Mussolini.

Senator SHORTRIDGE. But it is binding upon the conscience of Germany.

Mr. HUNT. It is not binding upon Germany in this respect at all, because it only applies in those countries where the allied governments took the German private property and applied it to the claims of the allied government's nationals. Then and then only did the obligation arise for Germany to reimburse her citizens. Now, that has never been done here. The German Government does not look upon the property here as confiscated, and you gentlemen do not look upon it as confiscated, or you would not be here considering this bill. We do not consider it as confiscated. It is the most serious fundamental error in the American mind; and I am sorry to say it has extended even somewhat to the judicial mind. The late Judge Rodgers wrote an opinion which is a matter for pity, or a joke, according to the way you look at it, in which he treated this treaty of Versailles as if it were law here. That treaty is no more law here than any other foreign law. It is in absolute conflict with the treaty we made with Germany regarding the claims before the Mixed Claims Commission; in absolute conflict. It is of no value here at all. We are under no obligation at all with respect to it. At this moment there is no obligation resting on Germany to reimburse her citizens for losses incurred in America, and such an obligation will arise only when you confiscate German property and apply it to the payment of German claims, or claims of Americans against German citizens; and when you do that the allies will correspondingly reduce the amount of Dawes plan annuities allowed to to us.

The CHAIRMAN. Is that all, Mr. Hunt?

Mr. HUNT. Senator, I have another point here. I want to say in regard to Mr. Le Fevre, that his connection with the North German Lloyd is just as he stated it yesterday—entirely honorable, but entirely unimportant. And also I wanted to refer to Mr. Armstrong's point with reference to the $20,000,000 North German Lloyd bond issue. Well, we had to borrow money. On the 1st of August, 1914, we owned 940,000 tons of ships, and after the deliveries under the treaty of Versailles, we owned 54,000 tons of lighters and tugs—that's all. We were a large organization, and after the war we had to start all over again. And we begged and borrowed all that we could, and started over again, and got our first ships back in 1922, practically as a gift from our English friends. We got six back for a very small amount. We now have 630,000 tons, but you can not compare that fairly with our position before the war, because three smaller companies have amalgamated with us since 1922, and those 630,000 tons are the total of the tonnage of the four companies, and half of it is old tonnage we bought back from the English. Of course, we have had to borrow money.

Then the reference to the fact that the advertisement states that we borrowed $3,000,000 from the German Government. That is true. However, unless the date for the hearing has been postponed, the Shipping Board, at this hour, as I talk here, is considering an

application from an American company for a loan of $90,000,000 from the American Government (the Shipping Board loan fund) for the construction of six ships to maintain a four-day service across the Atlantic. So I know you will not prejudice the Lloyd for having done what American companies have also done in much larger measure.

The CHAIRMAN. Gentlemen of the committee, Mr. Katz was to appear here with Mr. Hunt. I understand that he has a brief, and if Mr. Katz will file the brief we will consider it a part of the record. It has been submitted, I believe, to the clerk.

Mr. KATZ. It has been submitted, Mr. Chairman, to the clerk. The clerk has it.

The CHAIRMAN. The clerk may have it, but that does not put it in the record. It will go in the record, without objection.

(The brief referred to is as follows:)

NEW YORK, *January 10, 1928.*

HON. REED SMOOT,
Chairman, Finance Committee, United States Senate,
Washington, D. C.

DEAR SIR: There is now pending before the Finance Committee of the Senate, the House bill 7201 for the return of alien property, and the payment of American claims and compensation to the German owners of requisitioned private property, including ships.

Inquiry has disclosed the fact that you committee has not yet decided whether to hold public hearings upon the bill, and we beg to present to you, on behalf of various owners of requisitioned ships, for consideration by the committee, the following:

At the last session of Congress, it was suggested by some of the members of the finance committee that a sum not to exceed $100,000,000 for ships, patents and radio claimants, was excessive, and they referred to the naval appraisal of 1927 of $33,000,000 for the ships in support of their view.

Owing to the pressure of time and the desire on the part of your committee to present its report in time to have a bill passed, the shipowners were not given an opportunity to question before the committee as a whole the facts or circumstances or items considered in the naval appraisal, but your committee has been informed by Captain Roberts (see p. 332 of the hearings before said committee), that the appraisal was based upon the values of 1914, upon the erroneous theory that because the vessels were alleged to have been interned they were seized and upon a tramp steamer basis, namely, 6,500 tons, and of a speed of between 10 and 11 knots and of vessels of an average of 10 years old.

A. With reference to the age of the vessels, more than one-third of the total tonnage seized was less than 10 years old, and many of the vessels less than 5 years old. In fact, Captain Roberts refers to vessels 40 years old. None of the vessels seized was 40 years old. Only one, a small sailing vessel, to wit, the *Matador*, was 30 years old, and all of the others were considerably less than 20 years old.

B. With reference to tramp steamers of 6,500 tons, we call attention to the fact that less than 10 per cent of the total tonnage seized was of a class known as tramp steamers.

C. With reference to the speed of the vessels as taken by Captain Roberts at 10 to 11 knots per hour, we call attention to the fact that of the 109 vessels seized, 71 vessels were of 11 knots or more, and that of the 650,000 tons thus seized, over 563,000 tons were of 11 knots or more.

D. With reference to the so-called internment in 1914:

This was at a time when the President of the United States had urged a neutrality not only of conduct but of thought and expression. At that time, owing to the great dangers of the sea and to the fact that there had been no adjustments of neutral rights and no war-risk insurance, tonnage was at its lowest, and it can not be said to represent in the slightest degree the actual value of tonnage.

Further, there was in fact no internment. These vessels were in the custody of the various shipowners and in the immediate charge of the captains and crews belonging to the respective vessels, the owners paying all costs of the crew, supplies and maintenance of the ship.

The vessels were free to clear at any time that they saw fit and were willing to risk capture on the high seas.

As a matter of history the North German Lloyd steamer *Brandenburg* on August 21, 1914, cleared from Philadelphia with a cargo of coal for the city of Bergen, Norway, and arrived there safely. For a period commencing August 1, 1914, and down to April 1, 1917, the time when the collectors of the various ports took possession of the German vessels, a number of the steamship companies had a duly accredited port superintendent, who was quite familiar with the condition of the vessels.

As illustrating that the ships were not interned or seized, in 1914, we call attention to the fact that between the time of the declaration of the European war in 1914 and the time that the United States entered the war in 1917, the German steamer *Dacia* was sold and transferred to the American flag, and the sailing vessel *Steinbek* was sold.

After the outbreak of the European war and the taking of refuge of German vessels in American harbors, the following vessels sailed from American ports: The steamship *Brandenburg*, as above mentioned; the steamship *Barbarossa*; and the cargo submarine *Deutschland*.

In the latter part of 1916 Capt. William Reising had an offer of $200 per dead-weight ton for German tonnage which offer he communicated to the owners, the D. D. G. Hansa Line and Deutsch-Austral and Kosmos Line, but at that time the offer was refused by the owners upon the ground that the German steamship companies would need these vessels after the war and upon the further ground that the offer was too low.

According to A. Mitchell Palmer, former Alien Property Custodian and later Attorney General (see United States Supreme Court Record in United States *v.* Chemical Foundation, Vol. 11, p. 2244), the Shipping Board was willing to pay for two ships (the *Virginia*, built in 1889, of 3,420 dead-weight tons, and the *Albingia*, built in 1893, of 5,180 dead-weight tons), lying in one of the ports of Colombia, the sum of $1,900,000 and to leave this money in the hands of the Hamburg American Line in the United States. This was at an average price of $221 per dead-weight ton.

The *Virginia* at the time of the appraisal was 28 years old and the *Albingia* 24 years old.

As further illustrating the differences between the naval appraisal and the actual values of the ships, as shown by sales by the Shipping Board, we refer to the following:

(1) The *Adamsturm*, the first steamer mentioned in the report of J. R. McCarl, Comptroller General of the United States, in Senate Document No. 182, page 66, was appraised in the naval appraisal of 1917 at $209,650. This vessel, according to the port superintendent, who is prepared to appear before you committee, if necessary, was in a seaworthy condition on the evening of April 5, 1917, except for actual provisions, and balance of crew. This vessel was taken over by the collector of the port the following morning; it had a gross tonnage of 5,000 tons. No repairs of any kind were necessary, except to make her adaptable for war purposes; $177,000 was expended on her before she finally went to sea.

This vessel was sunk on her first trip, and the United States collected (according to Comptroller McCarl's report, p. 66) $1,120,320 insurance, which is more than five times the appraised value of the ship. The ship was appraised at $42 per ton, and insurance collected upon the basis of $224 per ton, or approximately 433 per cent above the appraised value.

(2) The *Darvel* of only 1,508 gross tons (also referred to in the report of Comptroller McCarl, p. 66), was insured and subsequently stranded. It was appraised at $67,230, nothing expended for repairs, and insurance collected of $370,445.92, over 450 per cent above the appraised value.

(3) The *Borneo* wa appraised at $82,800, nothing expended for repairs, was sold for and collected $237,500, 186 per cent above its appraised value (according to Comptroller McCarl's report, p. 66).

(4) The *Johanne* was appraised for $63,170, nothing expended for repairs, was sold, and collected, for $174,600, or 178 per cent above the appraised value (according to Comptroller McCarl's report, p. 66).

(5) The *Marudu* was appraised at $67,800, was sold, and collected, for $250,000, or 268 per cent above the appraised value. In this case also nothing was expended for repairs (according to Comptroller McCarl's report, p. 66).

(6) The *Prinz Eitel Friedrich* was not appraised, according to Comptroller McCarl's report, page 66, but according to the statement appearing at page 513 of No. 4 of the hearings before the Committee on Ways and Means, Sixty-

ninth Congress, was appraised at $142,400; nothing expended for repairs; was sold for, and collected, $800,000, 450 per cent above the appraised value.

(7) The *Savoia* was appraised at $34,870; nothing expended for repairs; was sold for, and collected, $187,500, or 431 per cent above the appraised value.

We therefore respectfully submit four tables, as follows:

Table No. 1.—Showing that on nine German seized vessels mentioned in Comptroller McCarl's report the sales price ran as high as 700 per cent above the naval appraisal. (The Comptroller's report is not clear, in that it states only the amount received and not the actual prices of the ships sold, or the balance remaining unpaid on account of the purchase price. The sales price of some of the ships may be found on page 513 of No. 4 of the hearings of the Ways and Means Committee of the Sixty-ninth Congress.)

Table No. 2.—Showing a list of 15 German vessels, mentioned in the comptroller's report, which have been compared with the list contained in the hearings before the Ways and Means Committee, at page 513, and show that the full purchase price had been paid.

According to this tabulation, the amount realized for these vessels ran as high as 500 per cent above the naval appraisal, and while the said appraisal ran as low as $27 per ton, as in the case of the *Tsingtau*, the sale was upon the basis of $163 per ton.

Table No. 3.—Shows a list of 12 German seized vessels, mentioned in Comptroller McCarl's report, and that the amount realized ran as high as 866 per cent above the appraised value. This is illustrated in the case of the *Allemannia*, appraised for $71,700, and collected on the sales price $673,400.

Table No. 4.—Gives a list of three steamers, mentioned in Comptroller McCarl's report, showing that the amount realized ran as high as 1,652 per cent above the appraised value, as in the case of the *Lyeemoon*. This vessel was appraised at $31,390 and was sunk, and $550,000 insurance collected.

We desire to bring to the attention of the committee the amounts realized by United States Shipping Board for the sale of ships as well as for the amount realized for charter hire on the German seized ships.

The total gross tonnage seized was approximately 640,000; this equaled a dead-weight tonnage of 1,024,000.

According to page 73 of the Fourth Annual Report of the United States Shipping Board, 45 ships were sold with a dead-weight tonnage of 236,895 tons, a little less than 25 per cent of the total dead-weight tonnage seized. These vessels were sold for $26,525,326. This representing less than 25 per cent of the total tonnage seized upon the same basis, the total tonnage should have brought, if sold at a minimum, of something more than $100,000,000. The tonnage thus disposed of was at a price less than half the actual value of tonnage at the time of the seizure.

Attention is also called to the fact, as illustrating the ridiculously low price realized for the vessels, that many vessels were sold almost for scrap.

The steamer *Grosse Kurfurst*, appraised at $606,000, was reconditioned at an expense of $1,819,000 (see p. 517 of the hearings before the Ways and Means Committee above mentioned) and was sold for only $100,000. The vessel *Vittebind*, appraised for $112,000, was sold for $9,700; the *Suevia*, appraised for $146,150, was sold for $9,000; etc. (see p. 513 of the hearings before the Ways and Means Committee above referred to).

The vessels were seized over 10 years ago. Allowing interest for that period at 5 per cent would bring the value of the ships with interest even upon this low basis far above $100,000,000.

The statement of Col. Joseph I. McMullen, of the War Department, dated December 1, 1926 (see p. 625–627 of the hearing above referred to), referring to the German ships seized during the war is very pertinent.

"The values placed on ships above as lost are based on the rate of $150 for dead-weight ton and $192 for gross ton. Placing this same value on the 605,000 tons of the German seized ships, you would have a total value at $150 per dead-weight ton of $90,750,000 and at $192 per gross ton, $116,160,000."

This more nearly approaches the figures above mentioned and would represent a more equitable adjustment and appraisal than that placed in war time by naval appraisers.

To suggest an allowance of 3 per cent for the period of use is not unreasonable. The contract for the purchase of ships from the Shipping Board carried 5 per cent interest on the unpaid balance.

We desire to present for the consideration of the finance committee, in addition to all of the foregoing, the fact that before the ships were sold the Shipping Board had made large profits from charter hire and use of German vessels.

As illustrating how unjust it would be for our Government to retain the enormous profits and not reimburse the owners whose property thus yielded these profits, we refer to the records of the Shipping Board as follows:

It appears from the Second Annual Report of the United States Shipping Board of December 1, 1918, that at least 87 German ships were taken over by the United States Government, including four from Cuba (p. 23), with a dead-weight tonnage of 598,816 tons; in fact, more than 100 ships were seized.

It appears from the First Annual Report of the United States Shipping Board (p. 13), that the charter hire at the beginning of the war, to wit, from July to September, 1917, was $13.88 per dead-weight ton per month, this rate increasing to $21 per ton per month in 1917, and soaring higher as the war progressed.

In so far as a few of these ships may have been used for transports, it is proper to calculate them as earning the same charter hire.

Upon this basis, at the minimum rate of $13.88 per ton per month, the Government received for the charter hire of the 87 ships at least the sum of $8,311,456.08 per month, equivalent to $99,737,472.96 per year; and at the rate of $21 per ton per month, the Government earned the sum of $12,575,136 per month, equivalent to $150,901,632 per year, and it is our information that, similarly, large profits were realized annually for several years.

Another illustration of the large profits earned by the United States Shipping Board is found in its operation of the small German vessel *Adelheid*, seized in Cuba, of the dead-weight tonnage of 4,942 tons. From information furnished to us, which we are told will be found in the records of the Shipping Board, the latter realized on seven trips of this vessel to Italy and back a net profit of $1,470,245; and these records will further show that this same vessel, covering a period of 677 days, had a net earning of $2,133,809.

From the Fifth Annual Report (p. 20) of the United States Shipping Board, it appears that the War Department has been indebted to the Shipping Board, for the hire of ships, in the sum of over $49,000,000, which indebtedness was canceled. It appears, also, that the Navy Department had been relieved of the payment of over $7,000,000, making a total indebtedness of over $56,000,000 for the charter hire of ships from July 1, 1918, to June 30, 1921.

We can not do better than quote from the speech of Capt. Warren F. Purdy, assistant to Brigadier General Dalton, vice president and general manager of the Merchant Fleet Corporation, which was printed in part, in the Journal of Commerce of November 10, 1927, as follows:

"That which prescience did for the United States Steel Corporation, the World War did for the great aggregation of small American exporters. Fate placed in the hands of the United States Government a great fleet of modern steel vessels, and during the two years following the war these ships ran to and from American ports as fast as possible delivering American products to all ports of the world, and laying the basis for the prosperity which still abides with us.

"It will probably be a surprise to most of you to know that the profits earned by our fleet in these two years were so great that the operaitng losses since that time have not yet balanced the account. In other words, the operation of our Government owned fleet since the close of the great war has not yet cost the American taxpayer one dollar.

"Though the business interests of this country may look with indifference on these ships, you may rest assured that the shipping and business interests of foreign and competing countries do not share this indifference. They realize that it is not a coincidence that those years in which America has owned a merchant fleet are the years of her greatest prosperity."

Further, there is no reason why the shipowners should be treated any differently than the owners of property on land. All property seized on land has either been retained by the Alien Property Custodian, or sold, and a trust fund of the proceeds established. The profits from all such seized property has likewise been turned over to the Alien Property Custodian, and $10,000 of principal, as well as $10,000 of interest, annually since March 4, 1923, have been paid to the owners.

If, therefore, the shipowners were treated upon the same basis, they would be entitled to either the ships, with the earnings amounting to over $99,000,000 per annum, or, said earnings, with the sales price of the ships, when sold.

The information above given, as well as these tables, indicate clearly that the naval appraisal was out of all proportion to a fair value of the ships at the time, and show, further, that an amount of $100,000,000 is but a fair and proper value.

We therefore respectfully urge that the honorable course on the part of the Government to pursue is to return to these shipowners at least a fair part of the moneys received and earned out of their property, and the provision, favored by the Government and by the House, for an appropriation of an amount not to exceed $100,000,000 for ships, radio, and patents, is fair, just, and equitable.

Very respectfully yours,

KATZ & SOMMERICH,
By MAYWELL C. KATZ.

TABLE NO. 1.—*Showing increase of selling price over naval appraisal of certain seized German vessels, with statement of amounts paid on account*

[Taken in part from report of Comptroller General J. R. McCarl, Senate Document No. 182, pages 66-67, and hearings before Ways and Means Committee, page 513]

Name of steamer	Gross tonnage	Navy appraisal 1917		Selling price U. S. Shipping Board	Rate per ton	Increases in selling price over naval appraisal	
		Amount	Rate per ton			Per cent	Per ton
Arnoldus Vinnen	1,860	$23,500.00	$12.60+	$192,500.00	$103.00+	700+	$90.50
Setos	4,730	130,210.00	27.50	975,000.00	206.13	650+	178.63
Elsass	6,591	469,810.00	71.28	1,783,980.00	270.67	280+	198.95
Dalbeck	2,723	67,230.00	24.68	228,500.00	83.90	239+	59.22
O. J. D. Ahlers	7,490	283,060.00	37.81	1,693,385.00	224.75	500+	188.29
Bochum	6,161	781,300.00	126.81	1,538,325.00	249.68	100+	122.83
Kurt	3,109	84,230.00	27.09	272,250.00	87.57	220+	60.47
Ottawa	2,659	30,300.00	11.40	206,250.00	77.56	600+	66.16
Esslingen	4,902	243,888.00	49.69	1,206,000.00	246.02	400+	196.26

TABLE NO. 2.—*Showing large increase of selling price over naval appraisal of certain seized German vessels, where, according to record, the full purchase price appears to have been paid*

[Taken in part from Report of Comptroller General J. R. McCarl, Senate Document No. 182, pages 66-67, and hearings before Ways and Means Committee, page 513]

Name of steamer	Gross tonnage	Navy appraisal, 1917		Selling price United States Shipping Board	Rate per ton	Increase in selling price over naval appraisal	
		Amount	Rate per ton			Per cent	Per ton
Coblenz	3,130	$92,440	$29+	$400,000	$127+	335	$97
Savoie	2,614	34,870	13+	187,500	71+	431	53
Sachsenwald	3,559	124,200	34+	187,500	52+	50	13
Prinz Sigismund	4,689	137,810	29+	187,500	39+	36	10
Johanne	1,531	63,170	41+	174,600	114+	178	73
Staats Sekretar (Kratke)	2,000	77,400	38+	300,000	150+	287	112
Wiegand	499	26,560	53+	27,500	55+	3	2
Borneo	2,168	82,800	38+	237,500	109+	186	71
Prinz Joachim	4,760	167,130	35+	185,000	39+	10	4
Carl Diedericksen	1,243	44,390	35+	200,000	161+	356	126
Tubingen	5,586	132,900	22+	150,480	26+	13	4
Gov. Joeschke	1,738	46,700	26+	235,000	135+	403	109
Clara Mennig	1,685	99,200	58+	280,000	166+	186	108
Marudu	1,514	67,800	44+	250,000	165+	268	141
Tsingtau	1,665	45,820	27+	275,000	163+	500	136

TABLE NO. 3.—*Showing increase in amounts received on account of selling price over naval appraisal of certain seized German vessels in instances where the record of the full selling price has not been made available*

[Taken from Report of Comptroller General J. R. McCarl, Senate Document No. 182, pp. 66-67]

Name of steamer	Gross tonnage	Naval appraisal of 1917		Proceeds of sale	Rate per ton	Increases in proceeds of sale over naval appraisal		
		Amount	Rate per ton			Amount	Per cent	Per ton
Allemannia	4,630	$71,700.00	$15.00+	$673,400.00	145+	$601,700.00	866	$130.00+
Arcadia	5,454	86,940.00	16.00+	130,231.66	23+	43,291.66	43	7.00+
Argus		[1]		3,833.33				
Armenia	5,464	86,150.00	15.00+	92,320.00	16.00+	6,170.00	6	1.00+
Armi		[1]		3,833.33				
Aroa		[1]		3,833.34				
Maia	2,555	101,200.00	39.00+	143,168.77	56.00+	41,968.77	43	17.00+
Mark	6,591	362,940.00	55.00+	478,125.00	72.00+	115,185.00	30	17.00+
Nassovia	3,902	94,970.00	24.00+	150,218.54	38.00+	55,248.54	58	14.00+
Pollux	86	[1]		21,000.00				
Prinz Eitel Friedrich	8,797	[1]		800,000.00				
Prinz Waldemar	3,227	100,430.00	31.00+	445,090.00	137.00+	344,570.00	340	106.00+

[1] No appraisal.

TABLE NO. 4.—*Showing large increases in amounts received on account of insurance, etc., over naval appraisal of certain seized German vessels*

[Taken from report of Comptroller General J. R. McCarl, Senate Document No. 182, pages 66-67]

Name of steamer	Gross tonnage	Naval appraisal of 1917		Proceeds from insurance, etc.	Rate per ton	Increases in proceeds of insurance, etc., over naval appraisal		
		Amount	Rate per ton			Amount	Per cent	Per ton
Adamsturm	5,000	$269,650.00	$42.00+	$1,120,320.00	$224.00	$910,670.00	433	$182.00
Darvel	1,508	67,230.00	44.00+	370,445.92	245.00+	303,215.92	457	201.00
Lyeemoon	1,925	31,390.00	16.00+	550,000.00	285.00+	518,610.00	1,652	269.00

The CHAIRMAN. Is Mr. McGowan here?

Mr. MCGOWAN. Present, Mr. Chairman.

The CHAIRMAN. I understand that you want a few minutes, Mr. McGowan, to discuss the question of American bonds seized in Germany.

Mr. MCGOWAN. Yes, sir.

STATEMENT OF LEWIS A. McGOWAN, ATTORNEY AT LAW, WASHINGTON, D. C.

Senator WALSH of Massachusetts. Who does the witness represent, Mr. Chairman?

The CHAIRMAN. He is to speak on the subject of American bonds that were seized in Germany.

Mr. MCGOWAN. Mr. Chairman and gentlemen, I represent the firm of Zimmerman & Forshay, and some other pre-war German banking houses that sold a great many bonds to American citizens long before we entered the war.

Senator EDGE. German bonds?

Mr. McGOWAN. German bonds, payable in marks.

Senator EDGE. Gold marks?

Mr. McGOWAN. Gold marks.

The CHAIRMAN. Are you sure they were payable in gold marks?

Mr. McGOWAN. At the time the law provided for the payment in gold marks.

The CHAIRMAN. The bond itself did not require payment in gold marks?

Mr. McGOWAN. No, sir.

Senator COUZENS. Is there some difference in the bonds; do some require payment in gold marks, and some leave out the words "gold marks"?

Mr. McGOWAN. No; I believe they simply state that they are payable in marks.

Senator COUZENS. But there is no distinction between the bonds; they all represent the same kind of payment?

Mr. McGOWAN. They all represent the same kind of payment.

Senator KING. Did the bonds mature during the war, or after the war, or did some of them, as I am advised, in fact, mature at the option of the German Government?

Mr. McGOWAN. Yes; at the option of the German Government, and the option of the German Reich, to some extent. But what I have in mind particularly is the fact that the last administration sent out a circular to the various German banking houses——

Senator COUZENS (interposing). Administration of what?

Mr. McGOWAN. The Wilson administration, in 1918, in order to ascertain the value of the German-owned property in America. President Harding, in the Sixty-sixth Congress, transmitted to the Senate, in connection with the framing of the treaty of Berlin, the various categories of damages which the American citizens had sustained with respect to property located in Germany. The total amount of that property approximated $191,000,000, of which $67,000,000 were American-owned securities.

In 1917 the trading with the enemy act was passed, and it gave an apparent right to the American creditor to collect out of the assets of his German debtor in the possession of the Alien Property Custodian debts that were owing to American citizens. Zimmerman & Forshay, in 1919, filed a claim with the Alien Property Custodian covering approximately $7,000,000 of German securities, German Government bonds, municipal, State, and industrial. In 1920 that act was amended, and it provided that the debt had to be owing on October 6, 1917. And they proceeded and endeavored to recover under that provision, and in the meantime the Mixed Claims Commission came into existence in 1922.

Senator KING. You used the word "owing." Did you use that as equivalent to due?

Mr. McGOWAN. That is the point I am coming to. The Secretary of State who negotiated the treaty between the United States and Germany was retained by the firm of Zimmerman & Forshay, or rather the Zimmerman & Forshay Assets Corporation, to go before the Supreme Court of the United States for the purpose of getting some money out of the fund in the possession of the Alien Property Custodian with regard to the debt that was owing by, I believe, the Werner Bank to Zimmerman & Forshay. Mr. Hughes, contended

that under his own treaty that we simply had to prove that the debt was owing; that we did not have to prove that the debt was due. And he went into the question very much at length, and very unfortunately for us, the Supreme Court decided, by a decision of five to four, that Mr. Hughes's client was not entitled to recover out of the funds in possession of the Alien Property Custodian.

In the meantime I had taken up with a bank in Pittsburgh the question of a client and a claim that I was prosecuting, and I suggested that they take up with Senator Sutherland, who was the Alien Property Custodian, the matter of amending the act so as to clarify that situation and give us a complete remedy against the German Deutsche. And the Senator wrote to the chariman of the committee on Foreign Relations of the House that he sympathized very much with these people who had sustained a loss by reason of the debasement of the mark currency and that it would please him to see the rate defined with respect to those debts that were owing to American citizens on or before October 6, 1917.

Senator REED of Pennsylvania. The rate of exchange defined?

Mr. MCGOWAN. The rate of exchange defined; yes, sir. When I was retained by the firm of Zimmerman & Forshay, they were in a very embarrassing condition. I was also retained by another firm that was in the same financially embarrassed condition. Both firms failed, one firm for $11,000,000, and the other firm for $18,000,000, within two months of one another, because of the way the mark currency fell. We endeavored to get our claims before the Mixed Claims Commission so as to eliminate the going before the United States court and getting a receiver. And we filed what we called a blanket claim. And we were ruled out, on the ground that the people had not ratified our act before the claim was filed. We were working under a 180-day limitation—a 6-month limitation. So we took the 20 cases that had been filed, amongst them was a very distinguished bank from Senator Reed's own city, Mr. Mellon's bank, and some others that are on this list. The American agent said to me, "Mr. McGowan, will you pick out a test case so that we can try out this question under the rules of the Mixed Claims Commission we can prove, if we can, that your people, if they had been enabled to get the bonds, they would have sold them?" We have been trying to get that proof for three years. We have sent men into Germany; we have gone into the record of the German alien property custodian over there, and we have not been able to get a great deal, on account of the fact that the time has gone by when that information is available.

Senator KING. Pardon an interruption, Mr. McGowan. These bonds were purchased, as I understand it, from this banking house or brokerage house which you represent?

Mr. MCGOWAN. Yes, sir.

Senator KING. By Americans?

Mr. MCGOWAN. Yes, sir.

Senator KING. Were the bonds physically delivered in the United States, either to the brokers, or to their clients?

Mr. MCGOWAN. We could not get them over, because of the rough submarine warfare of the German Government, which the German agent admits in his brief, so that we could sell them.

Senator KING. In whose possession were they?

Mr. McGOWAN. In the Deutsche Bank, and later in the control of the German Alien Property Custodian. We only ask for the same treatment you are giving to the Germans' property you are going to compensate them for. Take, for instance, the shipowners. They ask for the fair market value as of certain times. That is, $60,000,000 of claims that were transmitted to the Unietd States Senate, which undoubtedly was considered, and I presume the Senate figured in what we call the Knox-Porter resolution, because they were taken care of because of stock owned in German corporations, and that comes under the general category of securities.

Senator KING. Let me ask another question, if I may, just for information: Were those bonds to which you refer issued by the German Government; or if not by the German Government, were they issued by German municipalities, and if they were issued by German municipalities like Hamburg, for instance, were they guaranteed by the German Government?

Mr. McGOWAN. They were guaranteed by the debtor.

Senator KING. I mean by the State, or the Reich. Of course, if those are all bonds of the German Government, then the latter inquiry would be wholly immaterial. I am trying to ascertain whether the bonds were issued by the German Government, or by municipalities, and if they were issued by the German municipalities, were they guaranteed by the Government?

Mr. McGOWAN. The currency with which they were to be paid was guaranteed by the Government, just like our dollars is guaranteed.

Senator KING. That is not the question. Were the bonds issued by the Government?

Mr. McGOWAN. Not all of them.

Senator KING. Were some of them?

Mr. McGOWAN. Yes, sir.

Senator KING. Were those that were not issued by the Government, guaranteed by the German Government?

Mr. McGOWAN. I can specially say that they guaranteed the currency, and that the debtor guaranteed and pledged his tax resources for the payment of the bonds.

Senator KING. But the Reich, the State, did not guarantee them?

Mr. McGOWAN. Yes; the State that issued them did. They pledged their tax resources to their payment.

Senator KING. But the bonds that are issued by Philadelphia, for example, are not the bonds of the State of Pennsylvania, or of the Federal Government. I am speaking of the National German Government, and am asking whether they guaranteed to pay them.

Mr. McGOWAN. No, sir. But what I want to get at is the question of the payment of those bonds.

Senator REED of Pennsylvania. Will you, Mr. McGowan, at some time during your argument, address yourself to the question of whether or not we have the right under the treaty of Berlin, to apply this property to the payment of those debts? I understand the Mixed Claims Commission has held that we have no right to do it.

Mr. McGOWAN. The Supreme Court of the United States has held that any claim filed with the Alien Property Custodian is a claim against the United States Government.

The CHAIRMAN. Any claim?

Mr. McGOWAN. Yes; I have that right here, Mr. Chairman, if I can locate it. In other words, a claim filed with the Alien Property Custodian or a suit, is a suit aganist the United States Government.

Senator REED of Pennsylvania. Yes; but that does not answer my question.

Mr. McGOWAN. The court has also held that the title to the property that we have seized is in the United States Government.

Senator REED of Pennsylvania. I do not think you caught my point.

The Mixed Claims Commission has held that bonds which did not mature during the war period and may not have matured yet, or may have matured during recent years, since the peace treaty, that those debts of the German Government or of its municipalities, or industrials, were not debts which, under the treaty of Berlin, we have any legal right to apply German-owned alien property toward the payment of.

Mr. McGOWAN. But, Senator, on the other hand, you have decisions of the United States Supreme Court which say that the title to this property is in the possession of the United States Government. I can not see how the Mixed Claims Commission can say under the treaty of Berlin we can not do with it as we see fit.

Senator REED of Pennsylvania. The treaty of Berlin and the Knox-Porter resolution very definitely fix the nature of the pledge under which we hold that property.

Mr. McGOWAN. Yes, sir.

Senator REED of Pennsylvania. We hold it as pledged for the benefit of our citizens.

Mr. McGOWAN. Yes, sir.

Senator REED of Pennsylvania. And the exact nature of that pledge is plainly stated.

Mr. McGOWAN. Yes, sir.

Senator REED of Pennsylvania. I quote from the House report, which puts it very briefly. [Reading:]

> Another point about which some misunderstanding has prevailed is the liability of Germany for its bonds. If the bond or any of its coupons matured during the war, it became a debt of Germany upon the date of maturity, and Germany's liability was the same as in the case of any other debt—that is, it was liable at the rate of exchange agreed upon, 16 cents. However, if the bond did not mature during the war, Germany's only liability arose under article 297, as distinguished from debts under article 296. Consequently, Germany's liability is solely for damages resulting from exceptional war measures or measures of transfer of Germany. Germany's obligation was to make compensation to the extent of the damage sustained by the American citizens because of such measures. The proceedings of the commission—

That is the Mixed Claims Commission.

Mr. McGOWAN. Yes.

Senator REED of Pennsylvania. [Continuing reading:]

> in establishing its rules for the proof of damages are set out at length in the hearings held during the Sixty-ninth Congress, and your committee is convinced that they are very liberal and favorable to the American claimants.

That is the point that sticks in my mind, and in the minds of some other Senators.

Mr. McGOWAN. I do not see how they are so favorable. There are claims aggregating $67,000,000 in German securities. But we have had information from some one connected with the Mixed Claims Commission showing that not more than 1 per cent of those people have recovered.

Senator REED of Pennsylvania. That is a fact. But legally have we a right to allow them to recover by resort to this method?

Mr. McGOWAN. The distinguished Senator from California had a matter put into the bill last year with respect to the taking of the property of the companies who failed to pay their debts by reason of the San Francisco earthquake; and he put into that bill a provision to the effect that the property in the hands of the Alien Property Custodian should be made available to pay the claims of the people who did not get their money.

Senator SHORTRIDGE. That was put into the Winslow bill, and became a law also.

Mr. McGOWAN. Yes. And they failed to recover, Senator. And they took care of it in that bill.

Senator REED of Pennsylvania. Just a minute about that. The way that situation was taken care of was to prevent any payments to those defaulting companies until they made good on their defaults to the San Francisco claimants.

Senator SHORTRIDGE. Yes.

Senator REED of Pennsylvania. Now you have a debt of the German Government or German municipalities, and no one proposes to pay anything on that. This Alien Property bill will not carry one cent for the German Government.

Mr. McGOWAN. The property in the possession of the Alien Property Custodian belonging to the German debtor to a certain extent represents the proceeds of the sale or the German bonds in this country. There are, I understand, from $5,000,000 to $7,000,000 belonging to the German Government in the possession of the Alien Property Custodian that represents the proceeds of the sale of German bonds.

Senator REED of Pennsylvania. But they are not going to get that in this bill.

Mr. McGOWAN. But you take it away from the people from whom the loan was obtained. They get absolutely nothing. You take it away from the country where the economic loss was tremendous.

That is not a new matter in the Senate. Back in the early history of our country, when the French came to our aid, the French lost securities and money, and they complained to Alexander Hamilton because of the fact that they were not receiving their securities and money, and the matter came up and was debated on the floor of the United States Senate, and Adams and some other able Senators took the position that the American policy was that the American Government should pay the value of those securities as of the date of issue.

The situation became so complicated, as I stated, that it was necessary for ex-Secretary of State Hughes to go before the United States Supreme Court and argue his own treaty which, I suggest, is rather exceptional.

Senator KING. Mr. McGowan, do you think that we could subject any part of the fund in the hands of the Alien Property Custodian, except the $5,000,000 which belongs to the German Government, morally or legally, to the payment of these claims which you represent?

Mr. McGOWAN. Certainly. The chairman said last year in the hearings that we are morally bound to protect these bondholders.

Senator KING. Where will we get the money to protect them?

Mr. MCGOWAN. It is in the hands of the Alien Property Custodian.

Senator KING. But that property was sequestered under an act of Congress, and the understanding was, when that act of sequestration was passed, that we would hold it until after the war was over, and then it would be subject to disposal by Congress. And then the German Government passes legislation and says, as Senator Reed has suggested, that we, our Alien Property Custodian, holds it as a trustee for the owners. And under the treaty of Berlin, and under the Knox resolution, and under our acts of Congress, we hold that property first, under the act of sequestration, and second, under the treaty of Berlin. And the latter, to determine the limitations under which we hold it. We can not, as I see it, hold that property for the liquidation of the claims of German nationals that do not fall within those treaties.

Senator SHORTRIDGE. That is the point. Do any of those claims fall within the provisions of this treaty?

Senator KING. Germany has not agreed, as I understand it, that we may take the property of Henry Smith which is in the hands of the Alien Property Custodian and use it to repay the claim of Richard Roe because of the fact that Richard Roe was unfortunate enough to buy these securities.

Mr. MCGOWAN. We do not ask that, Senator. We ask that Richard Roe's property be taken and subjected to the use of similar property in the United States.

Senator EDGE. I want to ask a question to clarify a matter in my own mind. You stated a while ago that these bonds were issued for the purpose of securing funds by the Government, or municipalities, and that they pledged tax resources to the payment of the bonds. That is it, or words to that effect. In many cases, the municipal bonds were issued to build certain public construction works?

Mr. MCGOWAN. Yes, sir.

Senator EDGE. And which are now in existence?

Mr. MCGOWAN. Yes, sir.

Senator EDGE. Now is there not an actual legal claim against those properties that were so built?

Mr. MCGOWAN. We can not get jurisdiction over them.

Senator SHORTRIDGE. Why can you not?

Mr. MCGOWAN. Because under the German law, in establishing the relationship between the debtor and the creditor, and we can not get jurisdiction over it.

And what I had in mind, if I could read what the Alien Property Custodian had to say about this was this: That A's property be used to pay A's debts owing to the American citizen, and not B's debts.

Senator SHORTRIDGE. Mr. MCGOWAN, you have studied the question. I have had occasion to look into it somewhat. Is there any way by which the holder of any of these bonds may go into a court in Germany and get jurisdiction, in a court having jurisdiction thereof to attempt to enforce the rights of the complaining party?

Mr. MCGOWAN. No; the only jurisdiction we have is through the Alien Property Custodian.

The CHAIRMAN. No; that is not the question.

Senator SHORTRIDGE. You are leaving that question. I mean this--I have had it up in other matters: Is there any way by which

an American citizen who has suffered a loss, a holder of a bond, for example——

Mr. McGOWAN (interposing). Yes.

Senator SHORTRIDGE. Is there any way, is there any procedure in Germany by which this American citizen can go there and bring an action, and will the court take jurisdiction and grant proper relief?

Mr. McGOWAN. No; he has to submit this bonds to a revaluation on the basis of 12½ per cent of what he paid for them if he purchased before July, 1920, and if he purchased them after, 2½ per cent.

The CHAIRMAN. Senator, these are the facts of the case, as I understand it: A German claimant can go and sue, and he has all the rights that he had before, but what the result would be—and the German claimant knows what it would be—it would be payable in marks, and the marks are perfectly valueless, and, therefore, they do not take that course.

Senator SHORTRIDGE. That is what was said to my people: Go to Germany and try to get something.

Senator EDGE. The city of Hamburg was one of the cities that issued bonds which were purchased in large amounts by American citizens; and the income from those bonds was expended, as I said a while ago, for large construction works in the municipality.

Mr. McGOWAN. Yes, sir.

Senator EDGE. Have the present municipal authorities who are now in control of the city of Hamburg been approached as to what their attitude would be, with the income from the bonds existing in their city; knowing they have the result of the money so secured, have they ever shown an attitude of absolute repudiation as to the repayment of those bonds?

Mr. McGOWAN. I think up to 15 per cent they will pay; beyond that their attitude is absolute repudiation. That is, 85 per cent they repudiate.

Senator BARKLEY. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. Very well.

Senator BARKLEY. Assume that some of those bonds are bonds of the city of Hamburg; that they are not guaranteed by the general German Government or by the State, but only by the city of Hamburg. The Alien Property Custodian has no property in his possession that is the property of the city of Hamburg. Is it your contention that those bonds ought to be paid out of property that he holds, that was taken from other interests?

Mr. McGOWAN. Oh, no; only with the property that we own that belongs to the city of Hamburg, or the State of Hamburg.

Senator BARKLEY. If we have no property belonging to the city of Hamburg, what remedy would be available in that case?

Mr. McGOWAN. Then we would probably have to go and negotiate a treaty of commerce with that Government, and they guarantee the payment of the bonds.

Senator BARKLEY. The Alien Property Custodian has no property that was taken from any German municipality in Germany, has he?

Mr. McGOWAN. Oh, yes; from several cities.

Senator BARKLEY. Are any of those the cities which have issued any of these bonds?

Mr. McGOWAN. I believe so; and a great many of the industrials which issued bonds and sold them in this country—we have got property belonging to them.

Senator BARKLEY. But in any case where any city or any industrial has issued bonds, and that city or that industrial has no property now in the possession of the Alien Property Custodian here, what can we do about it? What can this committee do about it under this alien property bill?

Mr. MCGOWAN. You can not do very much with respect to it.

Senator BARKLEY. That is what I thought.

Mr. MCGOWAN. Mr. Chairman, the amendment of June 5, 1920, is as follows:

No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.

I propose an amendment to the bill, Mr. Chairman, as follows: On page 28, line 23, after the word "following," insert:

Not in any event shall a debt be allowed under this section unless it was owing and not due, or due and not paid in full. That such debt is to be paid according to the rate of exchange between the United States and Germany existing at the time it was contracted by the debtor. That the computing of exchange is to be determined by the figures of the Treasury Department in fixing the conversion rate of marks into dollars for revenue purposes. No debt shall be allowed under this section unless notice of claim has been filed or application therefor has been made to any department, agency, or officer of the United States Government prior to the date of the enactment of the settlement of war claims act of 1928.

Senator SHORTRIDGE. Mr. Chairman, before we take an adjournment I want it to appear with respect to the San Francisco insurance claims that our Alien Property Custodian did have and still retains funds belonging to the very companies that were obligated to pay the insurance; insurance company funds.

The CHAIRMAN. And those claims are to be paid out of that money?

Senator SHORTRIDGE. Yes; those claims are to be paid out of that money.

The CHAIRMAN. I have been handed a suggested amendment to the bill, as suggested by Mr. Charles Henry Butler. Without objection, that may be made a part of the record.

(The matter referred to is as follows:)

[H. R. 7201. Settlement of war claims act amendment suggested by Charles Henry Butler]

At end of bill add an additional section, as follows:

"SEC. 25. Notwithstanding any other provisions of this act, all payments made hereunder to American nationals on account of awards of the Mixed Claims Commission shall be considered for income-tax purposes as applicable, first, upon principal and thereafter upon interest, to the end that no tax shall be payable with respect to interest upon any award unless or until the principal thereof shall have been paid in full."

REASON FOR AMENDMENT

Section 5 of the act as now drawn provides for application of funds in the special deposit from time to time, first, in payment of interest to date on the unpaid balance of awards, and thereafter on the principal of such awards. While this is a proper method of computation for purposes of calculating the basis of

distribution as between the claimants, it should not be held to create taxable income in advance of the recovery of principal when such recovery is doubtful. While it is quite probable that the Treasury Department might reach this conclusion under ordinary principles of accounting, the matter is confused by the wording of the act above referred to, and it is believed should be clarified by amendment.

In bankruptcy proceedings claims are provable for the amount of principal and accrued interest, but dividends paid on such claims are not income until they exceed the amount of principal due. The same rule should be applied here. Germany is an insolvent debtor, making partial payments from time to time, and it is speculative whether the Dawes payments will be continued long enough to retire both principal and interest. It is submitted it would be highly unjust to tax American claimants on the theory they have received a profit through interest when their principal has not been and may never be received.

It will be noted that the wording of the amendment above proposed refers only to taxation of interest. If any payment on an award gives the claimant a capital gain (either because the loss has theretofore been claimed and allowed as a deduction or for any other reason) such capital gain will be computed and taxed under ordinary rules for determination of taxable income.

Senator EDGE. Mr. Chairman, I would like to have the name of Mr. Boles, counsel for the Lehigh Valley Railroad Co., with reference to some claims of that company.

The CHAIRMAN. Very well. The committee will now stand adjourned until two o'clock this afternoon.

(Whereupon, at 12 o'clock noon, the committee took a recess until two o'clock p. m. of the same day.)

AFTERNOON SESSION

The hearing was resumed at the expiration of the recess, Senator Reed Smoot (chairman) presiding.

The CHAIRMAN. I think you have asked for five minutes, Mr. Hoffstot.

STATEMENT OF F. N. HOFFSTOT, REPRESENTING KOPPEL CAR & EQUIPMENT CO.

Mr. HOFFSTOT. Mr. Chairman and gentlemen of the committee, I am president of the Pressed Steel Car Co. and bought the first alien custodian property sold, the Koppel property. I only had notice at 3.30 yesterday evening that Mr. Stickney, who is our counsel, had to remain in court. I am a layman, and I hope that you will deal gently with me.

We bought this business as a going business——

Senator KING. What business did you buy?

Mr. HOFFSTOT. Small cars, industrial cars. The Koppel is a German company with business all over the world. It had business in the United States, and after the Great War started, before we entered it, they had a lot of subsidiary companies, American companies. After we got into the war the Government, as I understand it, took their property, and they asked us, as we were in that line of business and the plant was within 35 miles of Pittsburgh, to bid on it. They asked others for bids. Finally they put it up for sale.

Senator KING. For how much?

Mr. HOFFSTOT. $1,312,000. I have wished lots of times that we never had it.

The CHAIRMAN. Will you tell the committee what you desire?

Mr. HOFFSTOT. These Germans have caused us untold expense and trouble. They are expecting to get back the full consideration that we paid to the United States Government. We have suggested that there be an amendment put in which, if you will allow me to read——

The CHAIRMAN. Yes; read it into the record.

Mr. HOFFSTOT (reading):

That all damages suffered and all expenditures made or incurred by any purchaser of property from the Alien Property Custodian in defending or establishing title to the company so purchased shall be paid to such purchaser out of the funds held by said Alien Property Custodian prior to any payment thereof to any enemy claimant—

I will leave this with the committee.

Senator BAYARD. On what page and in what line of the bill will you insert that?

The CHAIRMAN. We will put it in the proper place.

Mr. HOFFSTOT. As I say, I am not a lawyer. I trust that Senator Smoot will put it in the right place. If he will only put it in, that is all I am asking.

Senator KING. How was your title assailed?

Mr. HOFFSTOT. They have tied up our property in Germany, Brazil, and the Argentine Republic. I grabbed this volume [exhibiting a package] at 5 o'clock. That is about half of the record in the United States case alone——

Senator KING. Excuse me, but you did not buy property in Brazil or in Argentina, did you?

Mr. HOFFSTOT. The right to do business in Brazil, which belonged to the company that was sold.

Senator KING. And they went into Brazil and into Argentina and into other countries and brought proceedings to enjoin you from carrying on your business and selling your products there?

Mr. HOFFSTOT. Yes, sir; selling products as we do.

Senator KING. You do not have factories there?

Mr. HOFFSTOT. No; but the factory which we bought had a right to do business and it was so specified in the deed from the United States Government.

Senator KING. What right had they to do business in Argentina or Brazil that you would not have?

Mr. HOFFSTOT. That is what I want to know. I am perfectly willing to rest with you on that.

The CHAIRMAN. I suppose they had their patents recorded.

Mr. HOFFSTOT. That is not exactly the situation. We bought from the United States Government the rights which attached to the American Koppel Co., and those rights carry with them the right to do business in those different countries.

Senator KING. It was organized in the United States, a United States corporation?

Mr. HOFFSTOT. Yes.

Senator KING. And when you bought it you just took over the corporation and put in directors and continued the business?

Mr. HOFFSTOT. Yes, sir.

Senator KING. And they brought suit against you?

Mr. HOFFSTOT. Yes, sir. We have got the cars tied up, but we have won only an idle victory. We did not get the cars and they kept us from doing business in those countries.

Senator KING. What expense have you been put to?

Mr. HOFFSTOT. Up to date—I have not heard the latest returns—over fifty or sixty thousand dollars.

Senator KING. Are they still pursuing you?

Mr. HOFFSTOT. Oh, yes.

The CHAIRMAN. On what ground do they object to your selling in a foreign country?

Mr. HOFFSTOT. On the ground that we have no right to sell.

The CHAIRMAN. But they must have had some kind of a claim, either that they had patent for selling goods in that country, that you did not have, or for some other reason. Do you know what the real basis of their objection was?

Mr. HOFFSTOT. I can not give it to you in 5 minutes.

Senator KING. Have you a copy of the complaint?

Mr. HOFFSTOT. Yes. I will furnish you the whole thing.

Senator KING. Leave those with the committee.

Mr. HOFFSTOT. We got certification from the United States Government as to what our rights were in the matter, in 1921, and you will be furnished a copy.

Senator KING. Put it in the record at this time, and then there will not be any question about it.

Mr. HOFFSTOT. That is the original. I had to get that in a short time, sir.

Senator KING. This is not the original; it is a certified copy from the Department of State.

However, Mr. Chairman, I think he might furnish a copy, because he wants to use that somewhere else.

The CHAIRMAN. Have a copy made and send it to us.

(The witness later furnished the following extract from the testimony given at the hearing before the Committee on Ways and Means, House of Representatives, Sixty-ninth Congress, interim first and second sessions, 1926, as follows:)

STATEMENT OF ALBERT STICKNEY

Mr. STICKNEY. Mr. Chairman and gentlemen, I represent the Koppel Industrial Car & Equipment Co., a Pennsylvania corporation, which was the first purchaser, I believe, of a business sold by the Alien Property Custodian. My client made its purchase in December, 1918, after its seizure by the Alien Property Custodian. They purchased the property of a German corporation which had an American branch, which operated not only in the United States but had its branches in Cuba, Porto Rico, South America, and in the East, and was functioning under cover under other names through the war, until the United States came in. The company I represent was formed for the purpose of taking title to that business of that German corporation which was purchased from the Alien Property Custodian.

We are here to ask your consideration of these facts, that in the effort to do justice to the German owners of these businesses which have been sold we ask you not to overlook the fact that you may do an injustice to the American nationals who have bought these businesses, because there are others in the same situation we are in.

Mr. TREADWAY. Were there a good many others?

Mr. STICKNEY. I can not tell you how many. That can only be developed by the Alien Property Custodian, but I know there were a good many of them.

Among all the millions of dollars that Mr. Sutherland was telling you gentlemen about this morning, there are hidden away, $1,312,000 which was paid for our purchase of this German business, and we have had to go out and spend our good money to protect our business, because as soon as they had lost their title the Germans came in here and by every underhanded means—I will not go in details too much, because I know you are limited in point of time—by every possible underhanded means, including changing of their names, etc., tried to destroy the effect of our purchase and resume possession of their good will, and in an effort to defend the title which we purchased from the Alien Property Custodian we were forced to commence proceedings in the circuit court in New York, and there has been a bitterly fought litigation lasting from 1922 until the present time, and we are not through yet, although we have been partly successful in protecting ourselves.

Mr. GARNER. In what way have you been injured? Who is assailing you? We may have more time than you think, if you can give us details.

Mr. STICKNEY. I am delighted to know that. May I go into the matter in a little more detail?

The CHAIRMAN. Yes. However, if I understand the situation, I do not see what we have to do with it. You bought the property from the Alien Property Custodian, and you claim you have had difficulty in maintaining your title on account of protests from some parties. I do not know whether they claimed to be former owners or not. I do not see what we have to do with that proposition.

Mr. STICKNEY. I will tell the committee. We want you to make provision in any legislation which provides for the return of this money to German nationals for the indemnification of the American claimants who have bought these businesses before the German nationals shall be paid their money.

Mr. HAWLEY. You want to be paid court costs, attorneys' fees, and similar matters?

Mr. STICKNEY. Not that entirely, but the damages we have sustained. We had to go into Mexico and have a large expenditure, and lost a good deal of good will which we had bought.

Now, answering the question of the chairman, if we were dealing with an individual in the purchase of such a business we would have recourse in the courts against the man who sold it to us.

Mr. RAINEY. In just what way have you been injured by these people?

Mr. STICKNEY. Because the German corporation, former owners, came into America secretly, in underhanded ways, and tried to destroy the good will and the relations existing between my client and the customers. The German corporation is still existing in Germany, but is not now permitted to do business here. Do I make it clear?

Mr. RAINEY. Yes.

Mr. CHINDBLOM. They tried to get the business away from you?

Mr. STICKNEY. They referred to former orders they had taken from customers.

Mr. HADLEY. They did not make a direct assault upon your title?
Mr. STICKNEY. They could not do that. Indirectly, they did.
Mr. HADLEY. There was no direct attack made on your title? Did they claim you did not have a good title?
Mr. STICKNEY. There was a direct attack made in the litigation. They claimed we had purchased the physical assets and that they had the right to come into the United States and regain all of the good will, which they claimed belonged to them.
Mr. HADLEY. What did the Alien Property Custodian sell you?
Mr. STICKNEY. He sold us the business and good will as a going concern of the Orenstein & Koppel-Arthur Koppel Aktiengesellschaft in Germany.
Mr. HADLEY. And you have been protecting the title and the good will?
Mr. STICKNEY. We have been protecting the title and the good will.
Mr. RAINEY. How have they assailed you?
Mr. STICKNEY. Their agents went around. They opened offices in the same buildings where we had our offices in California, Illinois, and New York. They sent around their agents to interview the old customers. They had a list of customers and sent their agents around to interview them and referred to former orders which the German concern had taken and asked for a resumption of their former relations, trying to show that we had not purchased the good will and representing themselves as successors.
Mr. RAINEY. They wanted their old customers to buy from them goods they were manufacturing in Germany?
Mr. STICKNEY. Not as you put it. They wanted them to buy goods, and secretly deceived them into believing that the German company was still in existence, and that the Koppel Co., the purchaser in America, was a mongrel concern which had no title.
Mr. RAINEY. Did they sell goods?
Mr. STICKNEY. They did.
Mr. RAINEY. Which were manufactured in Germany?
Mr. STICKNEY. Yes.
Mr. GARNER. Let me see if I have a clear understanding of this. You bought from the Alien Property Custodian certain property for which you paid something over $1,300,000?
Mr. STICKNEY. Yes, sir.
Mr. GARNER. In buying that property, you bought not only the physical assets but the good will, etc.?
Mr. STICKNEY. Yes, sir.
Mr. GARNER. Now, it is proposed that we return to these Germans this $1,300,000 that you paid for it?
Mr. STICKNEY. With interest.
Mr. GARNER. Your contention is that before we are so generous with this German property, they ought to in good faith show that they have not depreciated your property since you bought it?
Mr. STICKNEY. And we ought to be paid our expenses.
Mr. GARNER. But before they could come in with clean hands they ought to show that they have not attempted to destroy the very property they are asking the United States to pay them for?
Mr. STICKNEY. By every principle of equity.

Mr. GARNER. And your contention is that, having bought this property in good faith, believing you got not only title to the physical assets but the good will as a going concern, before the Government turns back the property they ought to pay you the damage to your business?

Mr. STICKNEY. Exactly. And one further thing: They ought to require the German owners to quitclaim, so there will never be any question again of the title.

Mr. RAINEY. What kind of a suit was it you brought?

Mr. STICKNEY. We brought a suit for injunction in the United States district court to restrain them from doing what they have been doing, from operating under these names.

Mr. RAINEY. Was the injunction sustained.

Mr. STICKNEY. Yes, sir. At first it was denied by the court below. Then we took it to the circuit court of appeals and got an opinion which I should like to submit to be placed in the record, if the chairman sees fit, sustaining us in our position.

Mr. GARNER. Let that opinion go in the record.

The CHAIRMAN. Yes.

Mr. WATSON. Have you the amount of sales the German concern made?

Mr. STICKNEY. We were never able to develop that. May I take a few moments to elaborate on that? We were powerless, because we can not reach the Germans. There is no way, except through the jurisdiction which you and Congress have over the alien-property fund, that we can be protected. In this litigation I have been telling you about we were embarrassed by the fact that there were no agents we could subpœna in order to produce in court documents which we knew existed in Germany. There was no agent here, although they appeared by attorney. There was no agent on whom we could serve our subpœnas to produce these documents. And so, as I say, if we had sustained a million dollars damage there was no way by which we could get service or jurisdiction over these German nationals, except through the power that Congress has over this fund.

The CHAIRMAN. As I understand it, this is simply a contest between you and these Germans over the property that has been conveyed to you by the Alien Property Custodian, and they are claiming that one thing has been conveyed and you claim another thing has been conveyed. The upshot was that the suit was finally decided in your favor. I do not see how we can have anything to do with such a matter as that. It seems to me we would never get through if we are going to determine matters of that kind.

Mr. STICKNEY. Mr. Chairman, there is a familiar principle of equity that a person who comes in asking for equitable relief, as these Germans are doing, must first do equity; and since the United States Government has conveyed to us this business and good will, we are not asking the Government to pay us anything, but we are asking the Government to protect us in our purchase.

The CHAIRMAN. Did you get a judgment against them?

Mr. STICKNEY. Yes, sir.

The CHAIRMAN. For how much?

Mr. STICKNEY. We got an injunction.

The CHAIRMAN. Did you get a judgment for damages?

Mr. STICKNEY. We could not prove our damages, for the reasons I have told you. We could not develop the secret record in Germany.

Mr. HAWLEY. What would your damages have been?

Mr. STICKNEY. I know of $50,000, and I do not know how much more.

The CHAIRMAN. They are damages you can not prove?

Mr. STICKNEY. They are damages we can prove, in the way of expense we have been put to in going to Mexico and going into court there to protect ourselves. We can prove the damages, but we have no way to collect them unless Congress protects us in our purchase.

Mr. GARNER. You sought to restrain the former owners of this property from injuring your business by certain methods that they pursued?

Mr. STICKNEY. Yes, sir.

Mr. GARNER. You bought that property from the United States Government?

Mr. STICKNEY. Yes, sir.

Mr. GARNER. And you had to go into court to restrain these identical former owners from injuring the property you bought from the United States Government?

Mr. STICKNEY. Yes, sir.

Mr. GARNER. And this property now being legally vested in the United States, and the Germans asking us to give it back to them, you think they should show clean hands?

Mr. STICKNEY. Yes, sir.

The CHAIRMAN. They are not asking that the property be given back. They are asking what was paid for it. I think it would be just as reasonable for the Germans to ask to be paid back to them what the property was really worth.

Mr. STICKNEY. The full value was paid when we bought from the Alien Property Custodian.

Mr. CHINDBLOM. Was it under any compulsion?

Mr. STICKNEY. It was sold at auction sale.

Mr. CHINDBLOM. And you made a bid?

Mr. STICKNEY. And there were competitive bids. We paid more than the inventory value for the value of that business as a going concern.

Mr. TREADWAY. What were the assets?

Mr. STICKNEY. Industrial plant at Koppel, Pa., for the manufacture of industrial railway equipment and stock in some subsidiary companies which they had organized.

Mr. TREADWAY. Did it include any patents?

Mr. STICKNEY. Yes, sir; some patent rights, names, formulæ. This conveyance, which I will ask you to consider, conveyed in the most comprehensive way everything the Germans had or had enjoyed.

Mr. HADLEY. Have you the conveyance the Government made?

Mr. STICKNEY. Yes, sir.

Mr. HADLEY. What is the nature of it?

Mr. STICKNEY. It was in the form of a deed in great elaboration.

Mr. HADLEY. Did it guarantee in terms the title?

Mr. STICKNEY. It is not in the usual form of a warranty deed, but contained a compliance with a request for further assurance, and that was dealt with by Mr. Garvan in a letter which I should also

like to have you consider, in which he says we are entitled to the same relief I am asking from your committee.

Mr. GARNER. Those documents will all be put in the record.

Mr. HADLEY. Was the rule of caveat emptor raised in that proceeding?

Mr. STICKNEY. In the injunction suit?

Mr. HADLEY. Yes.

Mr. STICKNEY. No. It was deemed beyond question that we had the right to get the title.

Mr. HADLEY. Your title may perhaps show that. That is why I asked about it.

Mr. STICKNEY. Yes, sir. There was a most comprehensive conveyance, but not in the form of a warranty deed.

Mr. HADLEY. Was it in the nature of a quitclaim deed?

Mr. STICKNEY. No, sir.

Mr. CHINDBLOM. I understand you got the actual physical property.

Mr. STICKNEY. Yes, sir.

Mr. CHINDBLOM. Your complaint is that you were disturbed in your enjoyment of the good will of the business?

Mr. STICKNEY. Exactly.

Mr. CHINDBLOM. Is there any warranty of the good will by the Alien Property Custodian?

Mr. STICKNEY. It was a deed which any court of law would require the vendor of the business to protect us in. If the Government is subject to a different rule I want to be shown the authority.

Mr. CHINDBLOM. Do you not think a purchaser from an agency of the Government, under a very common and familiar rule, must protect himself in dealing with the Government?

Mr. STICKNEY. Then it would be a fraud upon the purchaser if the Government does not give us what it says it is going to give us.

Mr. CHINDBLOM. You do not charge an agency of the Government with fraud?

Mr. STICKNEY. I do not mean it in an offensive sense. I say a court would hold it to be a fraud upon the purchaser. I say you must give the deed the effect which its terms intend shall be given.

Mr. CHINDBLOM. Do I understand you claim the Alien Property Custodian warranted the good will, and you have a claim against him or the Government through him because there has been some failure of that good will?

Mr. STICKNEY. I do not say we have a claim. I say that is why we are asking from you this consideration, because our claim depends upon what was conveyed to us by the Alien Property Custodian.

Mr. CHINDBLOM. It is a familiar rule of law that anybody dealing with a Government agent must himself ascertain the power and the authority of this Government agent, and that no right of action and no recourse subsequently rests against the Government.

Mr. STICKNEY. I am not asking for any recourse against the Government. I am asking for recourse against the German nationals before this fund is turned back to them.

The CHAIRMAN. The rule Mr. Chindblom stated goes further. There can not be any recourse against anybody. If you buy property from the Government or State and the title is not good, that is all there is to it.

Mr. CHINDBLOM. You buy "as is," to put it in a common phrase.

The CHAIRMAN. Yes.

Mr. GARNER. Suppose he bought "as is," and he bought this property from these people and paid his money, and it was kept in a Pittsburgh bank, if they had been guilty of the things he has stated here he could have brought an action against them and recovered that fund in that bank.

Mr. STICKNEY. Yes, sir.

The CHAIRMAN. No.

Mr. GARNER. I do not know why he could not. As it is, you can not get a judgment against them. You can not recover from them. The only remedy you have is against the fund held by the United States which belongs to them?

Mr. STICKNEY. Yes, sir.

Mr. CHAIRMAN. When they appeared in court they were there for all purposes, and you could set up your claim against them.

Mr. STICKNEY. How could I enforce a judgment?

The CHAIRMAN. I am not talking about that, but you could get a judgment.

Mr. STICKNEY. I did get judgment. I could not prove money damages.

The CHAIRMAN. What you are asking for now is money damages?

Mr. STICKNEY. The Germans are dependent upon the consideration which your committee will give them in respect to their claims I say that according to the familiar principle they must do equity, and you have the power to make them do it without costing the Government one cent.

Mr. HADLEY. You could not prove damages in court; how could you expect to prove it here?

Mr. STICKNEY. Do you mean the damages we have suffered from diversion of business?

Mr. HADLEY. You failed to recover damages for the reasons you have stated. How could you expect to do it here?

Mr. STICKNEY. We did not recover the damages I am speaking about. The counsel fees and costs and damages we sustained in Mexico in protecting our rights we did not recover, but we might have been entitled to an accounting if we could have proved by the Germans or any other witnesses the orders they had taken away from our company.

Mr. HADLEY. I understand that is what you want to do here.

Mr. STICKNEY. That is what we could not prove.

Mr. HADLEY. You are asking that here?

Mr. STICKNEY. No, sir. The costs we have expended, the sort of damages we are asking for here are not the kind of court costs a court will allow in any litigation. If I should bring an injunction suit I could not recover counsel fees and the damages which I have really sustained, but would be limited to a violation of the injunction order. I can only recover the court costs.

Mr. HADLEY. I understand that. I did not understand you to limit your claim to counsel fees.

Mr. STICKNEY. We claimed in the litigation the right to recover such damages as we could show upon an accounting, and we could not show any, because the Germans had the records.

Mr. HADLEY. When you answered some one else awhile ago you broadened your claim much more than counsel fees.

Mr. STICKNEY. Yes; it is broader than counsel fees.

Mr. HADLEY. What are you seeking to recover?

Mr. STICKNEY. I am not asking for any special legislation which will only protect my client. Our case is typical of others, although they have not come forward as yet.

Mr. HADLEY. I am trying to get a direct statement as to what is embraced within your claim.

Mr. GARNER. Let me see if I have an understanding of it.

Mr. HADLEY. Let the witness state it.

Mr. STICKNEY. I will be very glad to.

Mr. HADLEY. I think he understands his case.

Mr. STICKNEY. We paid about $20,000 in counsel fees. We have paid registration fees, court costs, bond premiums, and other expenses, which I can give you the details of, but I have not the figures here. In Mexico and in Brazil we also had expenses where we had to go to protect our purchase.

Mr. OLDFIELD. How much does it all amount to?

Mr. STICKNEY. About $50,000 all told.

Mr. GARNER. Suppose Congress should determine that, in view of the situation you say exists, wherever the Alien Property Custodian found the former owners, by virtue of their act, had damaged such property, they should pay the damages before it would be returned, and seek to do justice and equity between the two parties, one having purchased it from another and he having gotten full value for his property—that is about what you want.

The CHAIRMAN. And this committee should, therefore, proceed to determine damages not recoverable in law.

Mr. STICKNEY. No, sir.

The CHAIRMAN. It has to be determined by somebody.

Mr. STICKNEY. The Alien Property Custodian is the person to determine that.

The CHAIRMAN. We would have to set up some tribunal for that purpose.

Mr. STICKNEY. No, sir.

The CHAIRMAN. We have got to do it.

Mr. STICKNEY. The Alien Property Custodian can do it.

The CHAIRMAN. He would be the tribunal. Somebody has to do that.

Mr. STICKNEY. Yes; I quite understand.

The CHAIRMAN. And that tribunal would proceed to assess damages for which there is no law.

Mr. STICKNEY. Of course, Congress can determine just what damages shall be allowed, whether they should be counsel fees and court costs, or damages for diversion of business, or anything else they choose to put into a bill. It is not for me to say. I should think the Alien Property Custodian would be the proper tribunal to determine that, and there should be provision for the procedure by which the amount of damages suffered should be assessed before the proceeds of the business are turned back to German nationals.

Mr. TREADWAY. During what years was this alleged damage done?

Mr. STICKNEY. From 1919 to 1923, when we succeeded in getting the decision of the Circuit Court of Appeals.

Mr. RAINEY. Was this suit under the name of the old company?

Mr. STICKNEY. No, sir. We took title in the name of the new company, but what the Germans did was to change the German name into a name closely resembling the American name under which the old company had done business. Here is one of their catalogues, an American catalogue, they used to use. "The Orenstein Koppel Co.," that was the name of the American branch. The Germans changed the name in Germany from "Orenstein & Koppel-Arthur Koppel Aktiengesellschaft" to "Orenstein & Koppel, A. G." That is the present German name. That very closely resembles the Orenstein-Koppel Co., which was the American name of the German concern. They circulated that document among our customers and got orders from our customers in America and Cuba.

Mr. RAINEY. Of course, your customers were customers of the German company?

Mr. STICKNEY. The American branch of the German company.

Mr. CHINDBLOM. Did they undersell you?

Mr. STICKNEY. Yes, sir. There is no question about that.

Mr. BACHARACH. Is that the reason they secured your customers, because they could buy cheaper from them?

Mr. STICKNEY. That is one reason. I am not prepared to say they could undersell us. I think they did it to attract customers away from us. I have not gone into the question of costs. I do not know how much profit they made on any orders they took away from us.

Mr. WATSON. Where did they have factories?

Mr. STICKNEY. England, South Africa, Austria, and Germany, and this factory in Koppel, Pa.

The CHAIRMAN. Have they a factory now in this country?

Mr. STICKNEY. No, sir. They are prevented from operating here. They may be still operating, but we do not know it.

The CHAIRMAN. Did they have a factory here at the time you commenced the suit?

Mr. STICKNEY. No, sir. They used their agents to go around and sell to old customers of the concern.

Mr. TREADWAY. Is that not a question of rivalry in business? There is no law to prevent their shipping good in here and selling.

Mr. STICKNEY. The courts have held they can not do it and use the name "Koppel." They are enjoined from using the name "Koppel," which was their former selling name.

Mr. TREADWAY. It seems to me it is very largely a matter of competition.

Mr. STICKNEY. There is no restraint of competition.

Mr. TREADWAY. The restraint you want enforced is the use of the word "Koppel," and the good-will proposition?

Mr. STICKNEY. Yes, sir. It is a direct fraud upon the purchaser. They make the people think they are buying goods from the American concern when they are getting them from the German concern.

The CHAIRMAN. And the court enjoined them from doing that?

Mr. STICKNEY. Judge Goddard's opinion was based on the ground of unfair competition.

Mr. TREADWAY. It seems to me your appeal is to the Federal Trade Commission and not to this committee or to Congress.

Mr. STICKNEY. No, sir. There is no legislation under which we can be indemnified.

Mr. TREADWAY. You want Congress to authorize the retention of certain funds to cover any damages that may have been done?

Mr. STICKNEY. Yes, sir.

Mr. TREADWAY. Is that your idea?

Mr. STICKNEY. Yes, sir; and to make it a condition of getting any relief that they quitclaim to Americans the good will they bought from the Alien Property Custodian, so they can not come in 10 years afterwards and still claim it.

Mr. CHINDBLOM. That would be a perfection of title for whatever it was worth and stopping of further seizure under the Government than already existed.

Mr. STICKNEY. I do not quite follow you, sir, in the stopping of further seizure.

Mr. CHINDBLOM. We have taken this property. We took it on account of the war and placed it in the hands of the Alien Property Custodian. Now you want them to assent to that.

Mr. STICKNEY. Yes, sir; as a condition of coming in and claiming the proceeds of the property. Why should they not?

Mr. CHINDBLOM. Was there any weakness of the title in the United States?

Mr. STICKNEY. No, sir. But we were under the necessity of going into court to protect it.

Mr. CHINDBLOM. You might have to do that even if you had their assent.

Mr. STICKNEY. You are right. We can never be completely protected.

Mr. CHINDBLOM. You would not get any better protection if you dealt with a private individual or corporation.

Mr. STICKNEY. I do not follow you there. I think we would.

Mr. CHINDBLOM. How would you? You might have contention with respect to the good will with anybody. That occurs constantly.

Mr. STICKNEY. Yes, sir; but if we had a quitclaim from the former owners, we would not have to go to court to get an injunction, or, if we did, it would be granted without any question.

Mr. CHINDBLOM. You say a quitclaim deed would improve your situation?

Mr. STICKNEY. Yes, sir.

Mr. CHINDBLOM. How would it? When you got into court did you not make your case by proving you bought that property from the Alien Property Custodian?

Mr. STICKNEY. You could do that with a good many affidavits and a good deal of difficulty. You can see what embarrassment we met with when we first went before Judge Hand in the first instance, and he denied us relief.

Mr. HADLEY. You had your title confirmed on appeal?

Mr. STICKNEY. Yes, sir.

Mr. HADLEY. Why do you need anything further?

Mr. STICKNEY. This company does not need anything, but I think other companies similarly situated need it more than we do.

Mr. HADLEY. Your title has been confirmed by the court. You seem to be asking for compensation for some losses that accrued subsequent to the original transactions, growing out of trade relations. You are simply seeking to have us indemnify you against that class of losses, which arise frequently in the course of transactions of that kind.

Mr. STICKNEY. But in those cases where it arises between individuals or persons who are engaged in unfair competition, you are required to pay the damages and account to them, and we can not make the Government account to us, except as you direct. It comes right back to that. We should have full relief against the man from whom we bought the business.

Mr. CHINDBLOM. Is that in the injunction?

Mr. STICKNEY. Yes, sir.

Mr. CHINDBLOM. How did you get service of process upon the German defendant?

Mr. STICKNEY. Through two of these agents who did not know we knew of their being here.

Mr. CHINDBLOM. If you are able to prove such damages as that, you could recover, could you not?

Mr. STICKNEY. We could have an accounting from the Germans of the profits they have made. Beyond that we would have no claim for damages, because the court costs would be all we could get.

Mr. CHINDBLOM. Then you want us to provide for your getting damages which you could not get in your suit?

Mr. STICKNEY. Yes; that may be. We could not get it in that suit.

Mr. RAINEY. I sympathize with you in this matter, as far as I am concerned. They do not have any property in this country except that held by the Alien Property Custodian?

Mr. STICKNEY. The German company?

Mr. RAINEY. Yes.

Mr. STICKNEY. No, sir; except the good will of the business, which extends all over the United States.

Mr. RAINEY. They have whatever interest in this fund held by the Alien Property Custodian, and which we are now asked to return to them, that we give them?

Mr. STICKNEY. Yes, sir.

Mr. RAINEY. You could not attack that in any way?

Mr. STICKNEY. No, sir.

Mr. RAINEY. You could not attack that in any proceeding in the court, and could not reach that fund by any suit.

Mr. STICKNEY. No, sir.

Mr. RAINEY. The only way in which you can reach that fund is by having some competent tribunal—the Alien Property Custodian or some one else—adjudge these equities?

Mr. STICKNEY. Precisely. We have no recourse against that fund.

Mr. OLDFIELD. Will you read to the committee what Mr. Garvan, former Alien Property Custodian, said on this subject? I find it is not a new idea. I think it is based on sound experience, and I think Mr. Garvan was correct.

The CHAIRMAN. There have been some Members of Congress who were not very much inclined to accept what Mr. Garvan said.

Mr. OLDFIELD. I do not think that is a correct statement by any means. There is not a thing in the record of Mr. Garvan that can be attacked by anybody.

The CHAIRMAN. It has been attacked.

Mr. OLDFIELD. Of course, there was some talk, but the courts have investigated Mr. Garvan from the beginning of his administration of the office of Alien Property Custodian, and I dare say if there had been the slightest thing shown up in the grand-jury investigation and

the court investigation they would have had him before the courts, as they had this fellow Miller recently.

The CHAIRMAN. Unfortunately, the way the court tried the case with which Mr. Garvan was connected, they found a good deal of this matter was entirely outlawed.

Mr. OLDFIELD. I do not recall that the courts have tried any of them.

The CHAIRMAN. The Chemical Foundation case.

Mr. OLDFIELD. The Supreme Court upheld everything Mr. Garvan did.

The CHAIRMAN. Oh, no.

Mr. OLDFIELD. Read the decision.

The CHAIRMAN. I have read every word of it. It did not go into the propriety of Mr. Garvan's conduct.

Mr. RAINEY. The witness was going to read what Mr. Garvan said. I would like to hear it.

Mr. STICKNEY (reading):

WASHINGTON, D. C., *February 19, 1921.*

KOPPEL INDUSTRIAL CAR & EQUIPMENT CO.,
Koppel, Pa.

GENTLEMEN: On September 12, 1918, the Alien Property Custodian sold to the Koppel Industrial Car & Equipment Co. at public auction, for $1,312,000, the property of Orenstein & Koppel-Arthur Koppel Aktiengesellschaft, registered under the laws of Pennsylvania as a foreign corporation, and its subsidiaries, including the Pennsylvania Car & Manufacturing Co.

The deed and bill of sale is dated December 24, 1918, and conveyed, inter alia, all and singular the property, real and personal, tangible and intangible, rights, claims, titles, interests, effects, and assets of every kind and description whatsoever of the said Orenstein & Koppel-Arthur Koppel Aktiengesellschaft—

That is the name of the German concern—

and all incidents and appurtenances thereto, including the business as a going concern and the good will possessed, held, and enjoyed by, in the name of, or for, or on behalf of, the companies whose properties were sold, and each of them.

The deed also conveyed "any and all registered trade-marks, trade names, and the like * * * belonging to, owned, possessed, held, used, or enjoyed by, in the name of, or for, or on behalf of, the said companies and concerns * * * and each and all of them."

By your letter of February 17, 1921, to me, it has been called to my attention that proceedings have been brought against the Koppel Industrial Car & Equipment Co. by the Orenstein & Koppel-Arthur Koppel Aktiengesellschaft or its agents interfering with or to restrain, in certain foreign countries, including Mexico and the Argentine Republic, your use of the word "Koppel," not only as your trade name or trade-mark, but as part of your trade name or trade-mark.

As requested in your letter of the 17th instant, I wish to assure you—

(1) That it is the judgment of the Alien Property Custodian that the Koppel Industrial Car & Equipment Co., under its deed of conveyance from the Alien Property Custodian, acquired the right to use in foreign countries the trade name and trade-mark "Koppel," and any other trade-marks, registered and/or unregistered, used by the American business of the Orenstein & Koppel-Arthur Koppel Aktiengesellschaft and the Pennsylvania Car & Manufacturing Co., an American subsidiary of the German company, in the same way and to the same extent as had been or was enjoyed by the American business of the Orenstein & Koppel-Arthur Koppel Aktiengesellschaft and by the Pennsylvania Car & Manufacturing Co., as evidenced by shipments made by either of them from the United States to foreign countries prior to the war between the United States and Germany.

(2) That it is the judgment of the Alien Property Custodian that the Orenstein & Koppel-Arthur Aktiengesellschaft should be required, before any of the proceeds of the sale of its property by the Alien Properrty Custodian are returned to it or to anyone in its behalf—

(*a*) To acknowledge, in writing, in the Koppel Industrial Car & Equipment Co., and the Pennsylvania Car & Manufcturing Co. their right to use in foreign

countries the trade name and trade-mark "Koppel," and other trade-marks and trade names, registered and/or unregistered, of the Orenstein & Koppel-Arthur Koppel Atiengesellschaft to the same extent as was enjoyed by the American business of the German company and by the Pennsylvania Car & Manufacturing Co. at the time they were sold to the Koppel Industrial Car & Equipment Co. by the Alien Property Custodian, as evidenced by shipments made by the American business of the Orenstein & Koppel-Arthur Koppel Aktiengesellschaft and by the Pennsylvania Car & Manufacturing Co. from the United States to foreign countries prior to the war between the United States and Germany, and to this end to execute and deliver to the Koppel Industrial Car & Equipment Co. such instruments properly legalized and in such form as for this purpose may be required by the laws of the various foreign countries.

(*b*) To reimburse the Koppel Industrial Car & Equipment Co. its reasonable expenses expended protecting its rights and in defending in foreign countries suits and proceedings brought or instituted against it and/or the Pennsylvania Car & Manufacturing Co. in foreign countries by the Orenstein & Koppel-Arthur Koppel Aktiengesellschaft to restrain and/or prevent and/or interfering with the use and enjoyment by the Koppel Industrial Car & Equipment Co. and/or the Pennsylvania Car & Manufacturing Co. of the trade-marks and trade names used and enjoyed by the American business of the Orenstein & Koppel-Arthur Koppel Aktiengesellschaft and the Pennsylvania Car & Manufacturing Co. prior to the war between the United States and Germany.

I have executed this letter in duplicate and have attached one copy to the trust file in this case. I may further add that I have discussed this matter with Attorney General Palmer, formerly Alien Property Custodian, when this sale was made, and he is in accord and indorses these findings.

Yours truly,

FRANCIS P. GARVAN,
Alien Property Custodian.

Mr. CHINDBLOM. That was written by Mr. Garvan?

Mr. STICKNEY. Yes, sir; Francis P. Garvan, Alien Property Custodian.

Mr. CHINDBLOM. Is that the original letter?

Mr. STICKNEY. That is a photostatic copy of the original.

Mr. CHINDBLOM. Mr. Garvan at that time being the Alien Property Custodian, did he suggest that you make your claim to him?

Mr. STICKNEY. The basis of the claim had not then arisen. This letter antedates the discovery of the attempt by the Germans to destroy the good will of the business.

Mr. HADLEY. Then why did he write that letter?

Mr. STICKNEY. Because in Mexico they had begun to try to injure us by the use of the name "Koppel," and we succeeded in the Mexican court, and I have a decision from the supreme court of Mexico on that point.

Mr. HADLEY. The courts resolved all points in your favor?

Mr. STICKNEY. Yes, sir.

Mr. HADLEY. And in America you got a decision upholding your contention against these Germans?

Mr. STICKNEY. Yes, sir.

Mr. HADLEY. That decision is res adjudicata upon these points?

Mr. STICKNEY. Yes, sir. We do not need that protection.

Mr. HADLEY. In America you could protect yourself by the plan suggested by Mr. Garvan. Therefore, the title has not only not failed, but you have complete protection?

Mr. STICKNEY. At the cost of $50,000.

Mr. HADLEY. Tht may be.

Mr. GARNER. What success did you have in Mexico?

Mr. STICKNEY. We were on the defensive there. We carried that litigation to the supreme court and got an adjudication in our favor

there denying the Germans the right to the use of the name, and affirming our right to it.

Mr. RAINEY. What happened in Brazil?

Mr. STICKNEY. That was in the Argentine Republic, instead of Brazil. I was mistaken about that. The litigation there has not been completed, but the American company has been successful up to date. That is still in the preliminary stages. We have succeeded wherever the matter has been fought out.

Mr. WATSON. Have you a copy of the order of the court and the agreement of sale?

Mr. STICKNEY. Yes, sir. May I put in the record the opinion of the Court of Appeals and the injunction order?

The CHAIRMAN. That may go in the record also.

Mr. STICKNEY. And the opinion of Judge Goddard?

The CHAIRMAN. Very well.

Mr. RAINEY. Do you know of any other companies that are similarly situated?

Mr. STICKNEY. I have made some inquiry, and have been unable to develop those facts. There was one concern that did not want its name used at this time.

Mr. RAINEY. If you know of any others, will you inform the committee?

Mr. STICKNEY. May I have permission to submit such names at a later time?

The CHAIRMAN. Yes.

Mr. STICKNEY. I shall ask to put in the record the conveyance itself. It is contained in this book, but I will give the reporter a photostatic copy.

We are not asking for damages against a third party. We are asking protection from the party with whom we dealt. I want the committee to bear in mind that we have a contract for our purchase, and we can not get protection in any other way than through reimbursement from this fund.

Mr. CHINDBLOM. Do you think there is any ground for doubting that the good will of business in Mexico can be conveyed by the Alien Property Custodian?

Mr. STICKNEY. Mexican law is a curious and wonderful thing. I do not really know enough about it to answer that question as I should like to, and as you should like to have it answered. I only know that we have a decree.

Mr. CHINDBLOM. I congratulate you on that.

Mr. STICKNEY. It is very hard to get.

Mr. CHINDBLOM. I think almost anybody would doubt that the Alien Property Custodian in the United States, selling a branch of a German business, could dispose of the good will in a foreign country.

Mr. STICKNEY. I will tell you how that happened. During the war, before the United States came in, there was no way that the Germans could function here as a going concern. I am speaking of the German corporation. They could not sell their product except through this American branch, and through it they sold in South America, Java, Sumatra, West Indies, and the American branch covered that entire business. Through the name of the American branch, the Pennsylvania Car & Manufacturing Co., which was a corporation formed by the Germans to mask their operations, they

carried it on without interference from Great Britain or the allied governments, deriving their profits, using the name of the American branch, and doing business through the American branch as though it was entirely separate from the German concern. That was one of the circumstances which was greatly in our favor in the circuit court of appeals. Of course, the argument was made there that you can not split up this good will; that belongs to the German company at home. We were able to show a complete divorcing of the entire foreign business from the German concern. I hope I have answered you.

Mr. CHINDBLOM. You have; very fully. The home concern did not retain any right or power at any time to use the selling facilities or the good will in any of this foreign trade outside of the United States?

Mr. STICKNEY. That is true. We established our supremacy through the same deed from the Alien Property Custodian, and our right to use the word "Koppel," which was the issue in Mexico and in Argentina.

Mr. RAINEY. That name had been used by the American company, and that good will had been established on account of the efforts of the American company in the United States, in Mexico, and other countries?

Mr. STICKNEY. Yes sir. I have a Mexican catalogue very similar to this one.

Mr. RAINEY. It was the American-German company that developed that business?

Mr. STICKNEY. Yes, sir.

Mr. RAINEY. And that good will?

Mr. STICKNEY. Yes, sir.

Mr. RAINEY. And that is what you bought?

Mr. STICKNEY. Yes, sir. May I put this in the record? Perhaps I have already taken too much of your time.

The CHAIRMAN. I do not like to encumber the record too much.

Mr. STICKNEY. I will not make that offer. I think Mr. Garvan's letter, which will go in the record, describes all that the committee will need of the technical verbiage of the conveyance.

Mr. TREADWAY. So the conveyance itself does not need to go in?

Mr. STICKNEY. I really think not. It is a very long document and hard to read.

Mr. RAINEY. Was that a Pennsylvania company?

Mr. STICKNEY. Yes, sir; the Koppel Car & Industrial Co., a Pennsylvania company.

Mr. RAINEY. And your company is also a Pennsylvania corporation?

Mr. STICKNEY. No, sir.

Mr. RAINEY. I mean the German company you spoke of.

Mr. STICKNEY. That was chartered in Germany. It had an American charter but did not use it. It got a license in the State of Pennsylvania to operate in that State under that name. That was always used as the name of the American branch.

Mr. RAINEY. Operating by permission of the State of Pennsylvania?

Mr. STICKNEY. Yes, sir.

The CHAIRMAN. Just what is it that you wish to put in the record now?

Mr. STICKNEY. The letter of Mr. Garvan has already gone in. I believe the only other thing I wish to put in the record is the opinion of the United States Circuit Court of Appeals in the case of the Koppel Industrial Car & Equipment Co. against Orenstein and Koppel Aktiengesellschaft and others.

The CHAIRMAN. That may go in the record at this point.

(The document referred to is here printed in full, as follows:)

United States Circuit Court of Appeals for the Second Circuit. Koppel Industrial Car & Equipment Co., complainant-appellant, against Orenstein & Koppel Aktiengesellschaft, Orenstein & Koppel Co. (Ltd.), L. E. Hellmann, and Eric Joseph, defendants-appellees.

OPINION OF COURT AND INJUNCTION ORDER AS REINSTATED

Before Hough, Manton, and Mayer, circuit judges.

Appeal from the United States District Court for the Southern District of New York from an order modifying a preliminary injunction granted in a suit brought by the Koppel Industrial Car & Equipment Co., complainant, against Orenstein & Koppel Aktiengesellschaft, Orenstein & Koppel Co. (Ltd.), L. E. Hellmann, and Eric Joseph, defendants. Complainant appeals. Reversed.

Larkin, Rathbone & Perry, Esqs., Reed, Smith, Shaw & McClay, Esqs., solicitors for appellant; Albert Stickney, Esq., Robert J. Dodds, Esq., Alfred W. Kiddle, Esq., of counsel; Duer & Taylor, Esqs., Hays, St. John & Moore, Esqs., solicitors for appellees; Geo. Winship Taylor, Esq., Leland B. Duer, Esq., Arthur Garfield Hays, Esq., of counsel.

Manton, circuit judge:

On September 12, 1918, the Alien Property Custodian sold the American business and good will as a going concern of a German corporation known as Orenstein & Kopper-Arthur Koppel, A. G. This German corporation owned and operated in the town of Koppel, Pa., a large plant, where it manufactured smaller types of railways or industrial material and equipment. It maintained an office at No. 30 Church Street, New York City, and other offices in the principal cities of the United States. It carried on a large and profitable business in the manufacture and sale of its products and had the reputation of being the largest American manufacturer and seller of such railway and industrial material and equipment. It began business in 1897 at Koppel, Pa., and in 1909 authority was obtained from the State of Pennsylvania to transact its business under the name of the Orenstein-Arthur Koppel Co. It also organized an American subsidiary corporation, known as the Orenstein-Arthur Koppel Co., under the laws of the State of Pennsylvania. But it is denied by affidavit that this Pennsylvania corporation transacted business after its organization.

It is admitted that the German corporation did business by virtue of the license granted to it by the State of Pennsylvania in the name of Orenstein-Arthur Koppel Co. The name was used in its American catalogues, its advertisements and trade circulars. It used a trade-mark symbol "O A K" which signified Orenstein-Arthur Koppel Co., and this was displayed on its catalogues and circulars. The name and the symbol identify solely the American business of the German company, as well as the business transacted in other English speaking countries. The fact appears to be that the American catalogue No. 850 of the company—in pre-war days and by the appellant since—used the name Orenstein-Arthur Koppel Co. with the descriptive trade-mark "O A K," and in other English speaking countries other than America, the company was referred to as the Orenstein and Koppel-Arthur Koppel Amalgamated, and the descriptive trade-mark used was O K A K.

The catalogue used in America mentioned the officers of the company located in the United States and its Territory, whereas the European catalogue mentioned London as the company's headquarters and referred to various European plants of the company. The largest agency of the American branch was located at No. 30 Church Street, New York City, and at the Rialto Building, San Francisco, Calif. The American business was practically independent of the German business. The works in Pennsylvania supplied the entire American trade except-

ing locomotives, which were not manufactured at Koppel. This plant also supplied the West Indies, South America, and the Philippine Islands trade of the company. During the war period it was operated independently and was also assigned to take care of the Japanese and South American trade.

Section 12 of the trading with the enemy act vested the alien Property Custodian with all the powers of th common-law trustee in respect to all property other than money which has been or shall be required to be conveyed, provisions of the act. And it gave him power to manage such property and do any act or things in respect thereof or make any disposition thereof, or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof. It provides for the sale to American citizens at public auction and to the highest bidder, after public advertising of the time and place of sale, and this to be where the property or the major portion thereof is situated, unless the President, stating the reasons therefor, in the public interest shall otherwise determine.

It is provided that the proceeds be deposited in the Treasury of the United States of any such property or rights so sold by him, and at the end of the war any claim of an enemy or ally of an enemy to any money or other property received and held by the Alien Property Custodian or deposited in the United States Treasury, shall be settled as Congress shall direct. The sole relief and remedy of any person having any claim to any money or other property conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, "shall be that provided by the terms of this act." In the event of sale or other disposition of property by the Alien Property Custodian it shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

An Executive order under date of February 26, 1918, was made, providing that the Alien Property Custodian may sell and deliver any rights appurtenant to the ownership of corporate stock, shares, or certificates or beneficial interests in cases where such rights would lapse unless exercised within a limited time. And it provided that—

"The Alien Property Custodian may manage, conduct, and operate any business, belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy in cases where the continuation of such business may seem to be necessary to prevent waste or to protect such business. And the Alien Property Custodian may sell or otherwise dispose of such business or any part thereof, or the assets or any part thereof, whenever such sale shall seem to be necessary to prevent waste or to protect such business. And in the management, operation, conduct, sale, or other disposition of such business the Alien Property Custodian may exercise every right, power, and authority of the enemy."

It was determined on June 15, 1918, by Executive order, that Orenstein and Koppel-Arthur Koppel Aktiengesellschaft was an enemy within the purview of the trading with the enemy act. The Alien Property Custodia on September 12, 1918, after having taken possession of all its property ,offered it at public auction, and the appellant became the purchaser for $1,312,000. The deed of this conveyance from the Alien Property Custodian provided—

"All and singular, the money and property, real and personal, tangible and intangible, rights, claims, titles, interests, effects, and assets of every kind and description whatsoever, wheresoever situate in the United States, as defined in the trading with the enemy act (excluding, however, accounts and notes receivable, claims, choses in action, money, cash, and deposits in bank), and all incidents and appurtenances thereto, including the business as a going concern and the good will, belonging to or owned, possessed, held, and enjoyed by, in the name of, or on behalf of, the following and each of them, namely:

Orenstein and Koppel-Arthur Koppel Aktiengesellschaft, registered under the laws of Pennsylvania as "Orenstein-Arthur Koppel Co.; Koppel Land Co., Beaver Connecting Railroad Co., Koppel Water Co., Pennsylvania Car & Manufacturing Co.; Orenstein-Arthur Koppel Co., a corporation of Pennsylvania; Universal Railway Products Co., Koppel Sales Co."

There was conveyed the plant at Koppel, Pa., the shares of stock in the charter of the Orenstein-Arthur Koppel Co., all registered trade-marks, trade names, and designs owned or used by any of the companies. No property of the German corporation as such was conveyed, excepting the American property, business, and good will. After such purchase at such public auction the appellant entered upon the manufacture and the carrying on of the American busines s

It maintained the selling agencies in the United States which had been operated by the German companies and continued the use of the catalogues and trade circulars, including catalogue No. 850, and the use of the name Orenstein-Arthur Koppel Co. and the trade-mark symbol O A K, although it had organized under the name of Koppel Industrial Car & Equipment Co.

In 1920 the German corporation attempted to reorganize its business in the United States through the appellees, Hellmann & Joseph, who were formerly agents and who now became agents for the German corporation in this business. Since then they have become American citizens. They opened an office at No. 30 Church Street, New York City, and in the Rialto Building in San Francisco, Calif., and the German corporation now advertises itself in the San Francisco telephone directory under the names of Koppel-Orenstein & Koppel and Orenstein & Koppel (Ltd.). They solicit customers from the offices in both cities. In March, 1920, the German company changed its name to Orenstein & Koppel, A. G. This change of name was practically identical with the name used in conducting the American business in pre-war times. A reasonable inference to be drawn from this change of name is that the German corporation is seeking to obtain the business flowing from the good will formerly had in this country, and this would be in direct competition with the appellant.

Other circumstances indicate the effort to recapture the business which it has lost and to take away from the appeallant that which is secured in the purchase from the Alien Property Custodian. Its American headquarters are located in the same building in New York City and in San Francisco, where its principal sales offices were conducted theretofore. It is endeavoring to sell the same supplies and industrial and railway equipment of the type and sizes which were being manufactured by the appellant in Koppel, Pa. It is soliciting the customers of the appellant and some of these were formally the customers of the German corporation. Representations are made to customers that it is the successor of the Orenstein-Arthur Koppel Co. This conduct indicates knowledge on the part of the agents in this country of the list of appellant's customers. It is able, because of labor conditions in Germany, to undersell the appellant. Instances of solicitation are set forth in the affidavits which show that Hellman forwarded catalogue No. 850, as well as No. 863 of the Orenstein-Koppel Co. of Berlin and Mexico, to a prospective customer and catalogue No. 850 bore on the cover the inscription "Orenstein-Arthur Koppel Co." The affidavits are sufficient in the statement of instances and incidents indicating that the appelles are endeavoring to recapture the business which was sold by the Alien Property Custodian as claimed by the appellant.

The question presented is whether such competition, in view of such sale, entitled the appellant to the aid of the court of equity by way of injunctive relief. It can not now be questioned that the provisions of the trading with the enemy act are constitutional and are now effective. (Central Trust Co. *v.* Garvan, 254 U. S. 554; Stoehr *v.* Wallace, 255 U. S. 239; Garvan *v.* $20,000 Bonds, 265 Fed. 477.) That Congress in time of war may authorize and provide for the seizure and sequestration through executive channels of property believed to be enemy owned, if adequate provision be made for return in case of mistake, is not debatable. (Central Trust Co. *v.* Garvan, supra.)

The trading with the enemy act, whether taken as originally enacted October 6, 1917 (ch. 106, 40 Stat. 411), or as since amended March 28, 1918 (ch. 28, 40 Stat. 459, 460), November 4, 1918 (ch. 201, 40 Stat. 1020), July 11, 1919 (ch. 6, 41 Stat. 35), June 5, 1920 (ch. 241, 41 Stat. 977), is strictly a war measure and finds sanction in the constitutional provision, Article I, section 8, clause 11, empowering Congress "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and waters." (Stoehr *v.* Wallace, 255 U. S. 239, 242.)

It was the apparent intention of Congress to sell enemy property as fully as the owner thereof could sell. This was deemed necessary as a war measure. In the case of a going concern which owned good will or trade-marks it was clearly intended that these concerns should be kept going in order to engage in manufacturing or other enterprises which might be needed for the welfare of our country during this period. And it had the other purpose of crippling the enemy to the extent of preventing the enemy from enjoying its property or the profits during such period. Likewise, it was the intention of Congress that the American citizen who was authorized to purchase at public sale should, if the terms of sale so provided, be able to buy and enjoy his purchase as a going concern, thereby obtaining all that the German proprietorship consisted of at the time of sale.

The language of the trading with the enemy act clearly embraces this power of sale. To permit of the sale of the physcial property only would have deprived

the purchaser in the instant case of the great value of the good will of the German corporation which had made its business and its growth during the preceding years. The conveyance by the bill of sale, as referred to, conveyed "the business as a going concern and the good will," together with "all registered and unregistered trademarks * * * trade names, and the like," and "all privileges, franchises, and rights of every kind" owned by the German corporation and its subsidiaries in the United States.

We think this conveyed to the purchaser the exclusive right to carry on the business in the United States, with the right of protection of a court of equity from interference by the German corporation, for if the present interference be permitted what was conveyed would in time be destroyed. The sale was as complete as if it were a voluntary conveyance of its interests in the United States by the German corporation. It is not the case of a sale in invitum of the good will and business. Assuming a voluntary sale of its good will and business had been made by the German corporation, would it have been at liberty later to impair the good will by seeking the customers of the buyer and carrying on business, using substantially the same trade name and trade symbol as they had theretofore used? We think not.

In the Peck Bros. & Co. *v.* Peck Bros. Co. (113 Fed. 281), a similar question was presented to the Circuit Court of Appeals for the Seventh Circuit. There receivers of a manufacturing corporation, after continuing the business until, by order of the court, the entire property, good will, trade-marks, etc., of the company were ordered sold to a committee representing all the stockholders, reorganized under the name of the Peck Bros. & Co., dissolving the old corporation. Prior to the receivership the company maintained a branch office in Chicago, Ill., and this was in charge of three stockholders, one of whom was by name Peck, and he was vice president of the company and one of the complainants in the receivership suit. Another of the number was appointed ancillary receiver of the Chicago property. Pending the receivership, such parties, joined by an attorney for the receivers, procured a charter from the State of Illinois for a corporation known as Peck Bros. Co., and it engaged in the same business.

The new company purchased the Chicago stock of the old, but not its good will. There was but one person named Peck. Both companies continued in business in the same territory and a confusion of goods resulted, owing to the similarity of names with which such goods were stamped. The court granted an injunction, holding that using the name of Peck Bros. Co. was for the fraudulent purpose of obtaining advantage of the reputation and established trade of the old company and in violation of the duty which its organizers owed to the old company as stockholders It was held that carrying on a business thereunder in the manner shown, constituted competition. And it was further held that sale by a decree of the court of all the property of a manufacturing or commercial corporation, including its franchises, name and good will to a reorganized committee representing all of its stockholders, passes to the purchasers and the reorganized company, the right of the company's trade name and to protection in its exclusive use to the same extent that such protection could have been invokedfy the old company had it continued in business.

In S. F. Myers Co. *v.* Tuttle (183 Fed. 235), a case in the District Court for the Southern District of New York, Judge Holt ruled that the purchaser of assets, good will, and corporate good name at a bankruptcy sale, could maintain an action in equity restraining the sons of the principal stockholder of the bankrupt concern from carrying on a company known as Myers Co., which was organized subsequent to the bankruptcy and which attempted to carry on a similar business to that previously carried on by the bankrupt. We approve the reason for that decision where it is said:

"He purchased the good will, the outstanding accounts, the subscription lists, and about three-quarters of the tangible assets, paying for them many thousand dollars. I think he was substantially the purchaser of the business as a going concern, and he is entitled to carry on the business without interference or piracy on the part of the Myers" (p. 237).

After the sale, in this instance, of the good will of the German corporation's business, it had no right to represent itself as carrying on that business which had been sold or to use its trade-marks or symbols or to represent itself as a continuer of that business in this country. The avenue of relief to it for what it lost, through the fortunes of war, is some future action by the Congress, and this is made clear by the statute. This is the only relief the German corporation can look forward to. It had no right to change its name and then have its representatives solicit the business in this country using such name and such

means as before described in seeking the business. It could not attempt to make the public believe that it was the same business nor could it advise customers in such a way as to impress them that they were continuing the old business which ceased by reason of the seizure by the Alien Property Custodian.

The language of Justice Holmes in the recent case of A. Bourjois & Co. *v.* Katzel instituted for infringement of trade-mark (decided January 29, 1923) is pertinent. There he said:

"After the sale the French manufacturers could not have come to the United States and have used their old marks in competition with the plaintiff * * *. If for the purpose of evading the effect of the transfer it had arranged with the defendant that she should sell with the old label, we suppose that no one could doubt that the contrivances must fail. There is no such conspiracy here, but, apart from the opening of a door to one, the vendors could not convey their goods free from the restriction to which the vendors were subject. Ownership of the goods does not carry the right to sell them with a specific mark. It does not necessarily carry the right to sell them at all in a given place."

We think that an injunction should be granted as prayed for in the order to show cause issued in the district court.

Order reversed.

The injunction order as reinstated reads as follows:

"*Ordered*, That defendants and each of them, their agents, representatives, and attorneys, be, and they are hereby, enjoined and restrained, during the pendency of this action, from directly or indirectly transacting in the United States of America, its territories or possessions, under or by use of the names 'Orenstein,' 'Koppel,' 'Arthur Koppel,' 'Orenstein-Arthur Koppel,' 'Orenstein & Koppel,' or other combinations or simulations of said names, the business of selling goods, wares, and merchandise formerly transacted in the United States of America, its territories or possessions, by defendants; from directly or indirectly manufacturing, selling, or delivering, under or by use of said names or any of them, or other combinations or simulations of said names in the United States of America, its territories or possessions, industrial or railway material or equipment, of the designs, kinds, or types formerly manufactured by the defendants at Koppel, Pennsylvania; from representing the defendants, or any of them, to the successors to the business, or any part thereof, formerly carried on by defendants in the United States of America, its territories or possessions, or to be connected in any manner therewith or with the name Orenstein-Arthur Koppel Co.; from publishing, circulating, displaying, or using catalogues, advertisements, photographs, letterheads, devices, designs, prints, labels, trade names or trade marks in connection with the manufacture, sale, or delivery of merchandise containing the names 'Orenstein,' 'Koppel,' 'Arthur Koppel,' 'Orenstein-Arthur Koppel,' 'Orenstein & Koppel,' or other combinations or simulations of said names; from maintaining offices or selling agencies in the United States of America, its territories or possessions, in, under, or by use of said names or any of them; from soliciting customers of the business formerly carried on by the defendants in the United States of America, its territories or possessions; from using the trade-marks, symbols, or devices referred to in the bill of complaint.

"*Further ordered*, That a mandate issue to said district court in accordance with this decree."

[Completion of testimony of Mr. Albert Stickney before the Committee on Ways and Means, House of Representatives, Sixty-ninth Congress.]

The CHAIRMAN. Is Mr. Rowe present?

Mr. ROWE. Mr. Chairman, in view of the condition of the committee's work, as I see it, I am going to withdraw my request to be heard.

STATEMENT OF NATHAN OTTINGER, OF WHITMAN, OTTINGER, RANSOM, COULSON & GOETZ, 120 BROADWAY, NEW YORK, N. Y.

Mr. OTTINGER. I am also speaking for Mr. Charles B. Alling, of New York City, who is with me.

The CHAIRMAN. You are interested in insurance companies?

Mr. OTTINGER. Yes, sir.

Senator KING. American or German?

Mr. OTTINGER. German.

May it please the gentlemen of the committee, at the last session of Congress this distinguished committee inserted as an amendment to the House bill that had been passed on this subject a section known as subdivision (r) on page 46 of this committee's report, the purport of which was that no German insurance company that had done business in the United States was to receive back any of its property unless all claims that had been filed against it with the Alien Property Custodian, whether barred or not by the statute of limitations, shall have been paid or satisfied.

The CHAIRMAN. Those were the San Francisco claims.

Mr. OTTINGER. They were not specifically stated to be the San Francisco claims, but I assume that was their purpose. But even though that may have been their purpose, the proposed amendment was general in terms and applied to all German insurance companies, even those that have never seen the State of California.

I understand that the proposition to compel the payment of these claims is based upon the assumption that many of the claims that were settled at the same average rate—that is, every insurance company, American, German and foreign, settled their claims on an average of from 75 to 80 cents on the dollar; that such settlement, for some reason, when made by the German companies was the result of fraud, and when made by American or English companies they were able to be settled on the same terms without any imputation of fraud.

I think that if this learned committee had been in possession of only some of the facts they would have hesitated very much before adopting that amendment.

Senator BAYARD. Are you referring particularly, now, to the San Francisco claims?

Mr. OTTINGER. Yes; but said amendment was worked out applying to all German insurance companies whether they did business in San Francisco or not. No German insurance companies got back any money unless all claims filed against them, whether barred by the statute of limitations or not, had been paid.

Senator KING. Suppose that payment was made as the result of compromise and without fraud; then would that amendment be broad enough so that you would be compelled to pay?

Mr. OTTINGER. In my opinion it was.

Perhaps I can clear up one or two misconceptions under which this committee labored, because this amendment was gotten in without any opportunity to the insurance companies at that time to be heard or to answer their side of the case.

I believe it is true that there were several German insurance companies and, I believe, several Austrian insurance companies which, to use the vernacular, did "welch" and did leave the State of California and did take with them such assets as they could, but none of those companies has to-day one dollar in the hands of the Alien Property Custodian.

The companies that I represent had been doing business in California for many years and continued to do business for a period of

11 years after the fire until they were barred by the trading with the enemy act from doing business; and their business was constantly increasing, which would hardly have been possible if they had been guilty of fraud in making settlements.

Senator KING. Then, after the settlements were made, for a number of years your company continued to do business in California?

Mr. OTTINGER. My company, the Prussian National, continued to do business until we were prohibited by the trading with the enemy act, and their business was on the constant increase.

Senator KING. How long between the settlements and the passage of the trading with the enemy act?

Mr. OTTINGER. The settlements were made in about 1907, and the trading with the enemy act was passed in 1917.

Senator KING. Then for 10 years those companies continued to do business and no suit was filed in the California courts or in any Federal court to set aside the settlement——

Mr. OTTINGER. Yes, there was; and that brings me to a very interesting phase of this discussion.

The CHAIRMAN. Did the German companies pay the same rates as the American claimants?

Mr. OTTINGER. The same average rate. There were a great many companies that paid one hundred cents on the dollar. There was a great many American and foreign companies that paid much less. So that the average rate, as shown in the report of the San Francisco Chamber of Commerce of 1907, which was before the war and when there was no motive for altering the facts beyond their proper limitations—but I will read what the report says:

> In the first place, unquestionably, taken all in all, the companies have done remarkably well. An immense sum of money has been paid into this city, a far larger sum than companies have ever been called upon to pay at one time before. In spite of the earthquake, in spite of the nearness in time of the Baltimore and Toronto conflagrations, the companies will finally have paid undoubtedly in the neighborhood of 80 per cent of the amount of insurance involved.

Our company has paid on the average 75 per cent, and in some instances a little bit more.

Senator King asked if there was any litigation over this matter. There was, and the termination of it is rather significant.

Let me say, as I understand it, that the only charge of fraud in procuring settlement was that they misrepresented their financial condition, which is almost inconceivable in view of the fact, as everybody knows, that no insurance company can do business in any State of the Union without filing annual statements of its financial condition, such as we have done; and those statements show that all of our companies were amply able, so far as the question of financial ability is concerned, to pay these claims, even though it is true that their surplus would have been reduced to such an extent that under the laws of California they would have been technically insolvent and would have asked for a receiver.

One of the companies was the Hamburg-Bremen, represented by Mr. Alling. Action was begun in 1907 in the Federal Court of California to set aside these settlements on the ground of fraud relative to about a dozen of these claimants who had settled.

A company was organized known as the Policy Holders Adjustment Co., to which several of these claims were assigned, and that company was the plaintiff in this action.

In 1913 its board of directors adopted a resolution from which I shall now read. This a photostatic copy. Mr. Alling has the original. It recites the commencement of this action based on the proposition that the settlements were obtained as the result of fraud, and says:

Whereas, the plaintiff on closer examination of the facts and particularly of the financial condition of the defendant during 1906 believes and is advised that no fraud, deceit or misrepresentation was in any manner practiced by said defendant; and

Whereas, said suit has been specially set for trial for January 7, 1913; and

Whereas the plaintiff is desirous of avoiding any further expense in said suit; and

Whereas, this company owns by way of assignment the following other claims against the Hamburg-Bremen Fire Insurance Co. which this company does not deem to be of sufficient value to prosecute—

Then it gives a number of names. [Continues reading:]

Now, therefore, be it

Resolved, That the officers of this company be, and they hereby are, authorized and directed—

1. To consent to the entry of a judgment of dismissal in said suit.
2. To transfer to the defendant the original assignment from said Hirsch to this company and all rights thereunder.
3. To transfer to the defendant all said other assignments of the claims specified above, and all rights thereunder.
4. To execute and deliver to the defendant a general release of all claims and demands against the defendant held by this company, or its assigns, and to execute such other and further papers as may be necessary in the premises.

Senator KING. Did this adjustment company represent all the California claimants?

Mr. OTTINGER. No; I do not think it did.

Senator SHORTRIDGE. What was the consideration? What did the company pay to bring about the dismissal of that action?

Mr. OTTINGER. I have no idea.

Senator SHORTRIDGE. It paid something.

Mr. OTTINGER. According to the resolution, it says they found no fraud and directed a dismissal of the action.

Senator SHORTRIDGE. I heard it read; but going below it and beneath and looking through it, was there not some settlement made, represented by your particular plaintiff as assignee?

Mr. OTTINGER. I have the original settlement here, at the rate of 75 cents on the dollar.

Senator SHORTRIDGE. No; but the settlement that brought about the dismissal of the case.

Mr. OTTINGER. I do not know.

Senator BAYARD. Do you know whether or not any settlement was made?

Mr. OTTINGER. I do not know whether there was or not.

Senator SHORTRIDGE. Do you think it was a voluntary dismissal?

Senator KING. This would seem to indicate that. It says:

Whereas, the plaintiff on closer examination of the facts, and particularly of the financial condition of the defendant during 1906, believes and is advised that no fraud, deceit, or misrepresentation was in any manner pract ced by said defendant—

And so on. And it was set for trial.

Mr. OTTINGER. If anybody can produce evidence showing that that settlement was the result of any payment, I should be glad to

have it. As a matter of fact, I did not represent the company. I represented the Prussian National.

Senator SHORTRIDGE. Who appears as counsel for the plaintiff?

Mr. ALLING. I might say that the counsel for the defendant was Mr. Samuel Knight.

Senator SHORTRIDGE. I know him very well. Who was the attorney for the plaintiff?

Mr. ALLING. I will advise you in a minute.

Mr. OTTINGER. On its face, Senator, it was an action to set aside the settlement on the ground of fraud.

Mr. ALLING. The Senator has asked for the names. They are Thomas, Gusto, Frick, and Deasy.

Mr. OTTINGER. As I have said before, the financial condition of these companies was an open book through the annual reports required to be filed in every State in which they did business, and it would seem to be a little bit difficult to find that there was a misstatement as to financial conditions.

In that connection, with reference to the settlements that were made, I also read from page 21 of this report of the San Francisco Chamber of Commerce.

There was a resolution adopted known as the New York resolution, shortly after the fire, in which it was stated that it was the sense of the meeting, under all the circumstances of the earthquake and the conflagration, that 75 cents on the dollar would be a fair settlement, which, frankly, I may say, I would have regarded as such under similar circumstances if I had represented the plaintiff.

Senator KING. Did the insurance cover only fire?

Mr. OTTINGER. Of course where it covered earthquakes they would have to pay. I do not know what the facts are in any given case.

The majority on this occasion adopted that resolution, as this report shows. They were known as the "Six-bit" companies. The companies voting against the resolution were immediately held in high esteem and called the "Dollar for dollar" companies.

On the following page it states:

> As a matter of fact, when it came to actual settlement some of the "Six-bit" companies settled their claims quite as favorably as the "Dollar for dollar" companies.

I suppose the inference to be drawn from that is that if one company cuts the adjustment down to 75 cents and then pays one dollar it is doing as well as the other company that will not claim in full and then settles for 75 cents on the dollar. That is the report of November 13, 1906.

But, as I have stated, it states that the average rate of settlement was 88 cents on the dollar. These companies, the three for whom I am speaking and which, as I understand it, are the only three that have any assets in the hands of the custodian, so that if any other companies have acted improperly we ought not to be punished for their misdeeds—brought practically all of the money that was needed for this settlement from Germany. The Hamburg-Bremen people brought over more than three and a half million of dollars. My company brought over approximately $700,000, and the Aachen & Munich Co. more than that, so that they could continue business

without having their capital or surplus depleted. My company did continue business right up to the time stated.

These companies, I may add, I think, in frankness, now that the war is over, always bore a fair reputation for prompt settlement and for proper business conduct; and in appearing here in opposition to the repetition of the amendment at the last session, I do so quite as much for the upholding of the reputation of these companies as I do for the amount of money that is involved.

Senator FESS. Is the amendment in the bill?

Mr. OTTINGER. No. The amendment was adopted by this committee at the last session of Congress as an amendment to bill 15009. It is not in this bill, but I understand that there has been introduced at this session another bill to the effect that the statute of limitations must be waived with reference to the San Francisco claims and that a bulk action may be brought so far as the allowance of the claims by the custodian is concerned.

Senator SHORTRIDGE. This amendment which went into the bill at the last session was the same, almost in haec verba as the section in the Winslow bill which passed both Houses and was signed by the President.

Mr. OTTINGER. I may add that these same claimants filed their claims with the Mixed Claims Commission which dismissed them some time last year for lack of evidence.

The so-called Winslow bill, which is now in effect, by paragraph 10 of subsection (b) of section 9 provides that no German insurance company may receive even the $10,000 which every enemy was permitted to receive unless all claims, whether barred by the statute of limitations or not, shall have been paid.

The Alien Property Custodian's office advised me—and I see that Senator Sutherland is here, so if I am incorrect I would like to be corrected—that during the five years for which these actions have been pending in the Alien Property Custodian's office not one bit of evidence has been adduced in their support.

Senator SHORTRIDGE. Did he give you the reason for that?

Mr. OTTINGER. I suppose the reason that would be given would be the statute of limitations.

Senator SHORTRIDGE. Precisely.

Mr. OTTINGER. But I also suppose, if I may respectfully remark that if under the egis of the statute I had a claim which I regarded as, approximately settled, I would produce my evidence of fraud so that the custodian could say, "This is an average claim except for the statute of limitations"——

Senator MCLEAN. Would a provision exempting companies that had paid a large percentage, 70 or 75 per cent, relieve such a situation?

Mr. OTTINGER. Yes; it would.

The CHAIRMAN. It would relieve them all?

Mr. OTTINGER. It would relieve all the companies that have assets in the custodian's hands. There are only three of those companies that have assets, the Prussian National, the Hamburg-Bremen and the Aachen & Munich.

It is an important matter, and if I may take a few moments more of your time, I want to call your attention to two situations, one of which is stressed by this report of the chamber of commerce.

All of these insurance companies had reinsurance with other companies, either American or foreign, and as this report states, the reinsuring companies notified these direct writing companies that they would not pay their reinsurance unless their settlements were made on a strictly legal basis, so that there was a certain degree of compulsion, compelling us to see that we paid no more than the claims we were entitled to.

But if this amendment were to be adopted we would find ourselves in the very peculiar position of having to pay the balance of 25 per cent of these claims with 7 years interest for a period of 21 years and not being able to recover $1 from the reinsurance companies for the additional amounts we would have to pay.

Senator McLEAN. Would you not be protected?

Mr. OTTINGER. I should think so; but under the terms of this amendment as drawn we must pay every claim that is filed against us by the Alien Property Custodian, whether the statute of limitations has expired or not; and unless we pay those claims we can not get a dollar of money.

There is a provision in this amendment stating that where it can be shown that there was fraud in a settlement, then we can not get our money unless we make good; but as a matter of fact, if these settlements for fraud were set aside both parties would be restored to their original status.

Senator SHORTRIDGE. That is what we seek.

Mr. OTTINGER. Yes; but then the plaintiffs would have to prove their loss ab initio in each case.

Senator SHORTRIDGE. And prove fraud?

Mr. OTTINGER. Certainly. But there is no provision in this act that applies——

Senator SHORTRIDGE. We might amend it so as to meet your objection in that regard.

Senator KING. This amendment does not address itself to my conscience at all.

Senator SHORTRIDGE. There is no amendment yet pending before this committee.

Senator KING. The one we adopted at the last session.

Senator SHORTRIDGE. He is predicating his remarks upon the amendment as it went into the former bill.

Mr. OTTINGER. While we are on this question of fraud I would like to say that I have no desire to beat about the bush if there be any legitimate evidence of fraud; nevertheless, I say that this amendment should not be passed.

There was a man by the name of Deasy who was a justice of the peace in California and who posed as a commissioner appointed by the Mixed Claims Commission to take testimony. He had a stenographer, a Mr. Parkin, who wrote me asking me whether I wanted a copy of the testimony. These were wholly ex parte proceedings. I wrote him that if he would refer me to any order of the Mixed Claims Commission appointing him commissioner I would be glad to order the testimony.

In the meantime I wrote to the commission asking if Deasy had been so appointed, and I received this letter from Mr. Chandler S. Andrews, the American member of that commission, dated September 25, 1924:

Mr. NATHAN OTTINGER,
Care of Whitman, Ottinger & Ransom,
New York City.

DEAR SIR: I am in receipt of your letter of September 24 with reference to claims of policyholders of German insurance companies for losses arising out of the San Francisco earthquake.

In answer to your inquiry, this commission has not authorized anyone to act for it or on its behalf with respect to any claims pending before this commission. The claims which you mention have not yet been submitted to the commission for action. I can not, therefore, advise you as to their status and must refer you to the Hon. Robert W. Bonynge, the agent of the Government of the United States before this commission, for any further information with reference to them.

Very truly yours,

CHANDLER S. ANDREWS.

Deasy proceeded to take some 200 pages of testimony without any opportunity for cross-examination or for the presentation of the defendants' cause; and I submit that the circumstances under which the testimony was taken is almost a fair indication of the validity of the claims. I am going to read very briefly from the testimony of one of the witnesses there, remembering that he was examined by counsel for the plaintiff who was desirous of establishing fraud. This is the testimony of Herman C. Borjes:

Q. You received that under protest, did you not?—A. I didn't protest, but I took the money.

Q. Well, if you didn't protest, and you took the money, how are you going to reconcile the situation that you place us in? I can't consistently do anything for anyone that says he took the money without protesting against it.—A. Certainly we are not satisfied.

Q. Well, as a matter of fact, didn't you receive it under protest? Didn't you protest at the time that they should pay the entire amount of the money? Didn't you do that?—A. I don't remember exactly.

Senator SHORTRIDGE. Who put those questions?

Mr. OTTINGER. I believe, Mr. Gelman, who represented the claimants. This depends not so much on Judge Deasy's right to ask as it does upon the testimony of one of these claimants. [Reading further:]

Q. What did you say to them, if anything? Explain your position. Didn't you make demand?—A. They asked if I was satisfied to take the amount of $562.50. I took their check, and that was the end of it.

Q. Do you realize that we are engaged in a serious matter, and of course we can't very well advance anything along the line you have just stated. If you will tell me positively, or directly, or even by implication only that you protested against this enforced settlement at the time you received it, and demanded the total amount of the policy, then I can proceed to elicit further testimony. Otherwise I will have to stop short. Certainly you went there with some definite purpose in view. Didn't you go there and demand the total amount of the policies in each instance?—A. I demanded it, yes, but they only paid 75 cents on the dollar at that time.

Q. When they were talking to you about the 75 cents on the dollar, didn't you protest to them against receiving it, and demand the total amount?—A. To tell the truth, I don't remember.

Senator SHORTRIDGE. You would state to the committee, if you are familiar with the facts, that that was not a proper court proceeding at all?

Mr. OTTINGER. It may be, but I submit that it shows the attitude of mind of one of these gentlemen who is now the claimant and who must be paid, under this amendment, if it is adopted, whether the claim is right or wrong. [Reading further:]

The COMMISSIONER. Did you understand that you had to take 75 cents or get nothing? Do you remember that?

A. I don't remember.

Q. Do you remember why you took the 75 cents at that time when you had a perfectly good, legal demand for 100 cents on the dollar?—A. I needed the money at that time, so I took the 75.

Q. Was it in addition to the fact that you couldn't get any more?—A. That was what they used to say at that time; I don't remember.

Q. Did they say that to you?—A. The company didn't.

Q. The man that settled with you, the agent?—A. No; he didn't say so.

Q. Just offered you 75 cents?—A. Just offered me 75 cents.

Q. That looked like a get and you got it?—A. Yes, sir.

That is his testimony.

Senator SHORTRIDGE. There was no court proceeding there.

Mr. OTTINGER. I realize that.

Senator KING. If the claimant, who is here now insisting that we set aside the statute of limitations to permit him to sue, made this statement, he made it probably under oath.

Senator SHORTRIDGE. As to that, of course, he would have no case.

Senator KING. He may be a type of the others; we do not know. But this is material, I think.

Senator SHORTRIDGE. Oh, I grant you. It throws light upon it.

Mr. OTTINGER. May it please the committee, I have made a brief analysis of all of the testimony that was given before Judge Deasy, and I would like to file this with the committee.

Nobody went any further than to say that he protested against taking 75 cents, but one of the witnesses testified that she brought her suit in court, that the court awarded her 90 cents on the dollar, and she took that under protest, after the court had decided that that was all she was entitled to.

There was not one witness of those who appeared before Judge Deasy—and I think there were some 80 or 90 of them, 50 of whom had no claim against these three companies, but against other companies—who testified that any misstatement of financial condition was made, which was the gravamen of the claims as filed in the office of the Alien Property Custodian and as filed before the Mixed Claims Commission.

On the contrary, there were two who said that the agent told them they had got enough money to pay their claim dollar for dollar. Another one said that they could still pay every dollar and still have some money. That is the statement that the settling agent made—the fraudulent settling agent.

Another one said that a bird in the hand is worth two in the bush.

There was a witness by the name of Wissing who said that the agent of the company told him:

They were capable of paying more, but I should stand the loss of 25 per cent on account of being such a big catastrophe, that I should stand part of the loss. They had millions back of them.

Another one had his policies hypothecated with a bank that had a mortgage on his property. He testified that the bank took 80 cents because—

they claimed it would be better to take it than to go to lawsuit, and we took the money under protest.

Senator KING. Did a representative of the bank appear before Deasy?

Mr. OTTINGER. No; but the owner of the building testified to that effect.

Then there was another witness who volunteered the information that there was no water in the mains available at that time.

I am not going to take much more time on this matter.

The CHAIRMAN. Finish as soon as you can.

Mr. OTTINGER. We have, first, the broad proposition of whether in any case—and I am not discussing the question of the power of Congress to waive the statute of limitations——

Senator KING. I will say for your gratification that Congress has no power to suspend the statute of a State.

Mr. OTTINGER. I think you are right.

Senator SHORTRIDGE. You go upon the assumption that a State statute would control in a Federal court?

Senator KING. That the Federal Government has no right to change the statute of limitations or fix the statute of limitations in any State.

Mr. OTTINGER. I respectfully submit that on the broad proposition of even assuming that Congress has full power of suspending the statute of limitations after a period of 21 years in cases where claims have been settled—I am not talking about claims that have not been paid at all, but claims that have never been settled, and where under the California statute there is not only the usual period of limitation, but in cases of fraud the limitation does not begin to run until after the discovery of the fraud—I submit that the very proposition after 21 years of removing the statute of limitations under those circumstances is not one which ought to have the approval of this committee.

It is not just a question of the statute of limitations, but the statute of limitations is particularly important in the insurance business, because as every man knows, every insurance policy as a rule contains a specific statute of limitations for the obvious reason that within a year or two years after a fire has occurred the evidences of the fire which would be necessary to determine the amount of loss have been obliterated. So that is an essential part of this business.

I respectfully submit that under all of the circumstances no amendment of this kind ought to be adopted. As I said this morning, this is already the law by virtue of the provision now in the Winslow bill, paragraph 10, of subsection (b) of section 9. I respectfully submit that in order to remove any doubt on this subject, if this committee finds that an amendment of this kind ought not to be adopted, they ought to go the "whole hog" and remove from paragraph 10 the proviso that no insurance company may receive even the $10,000 unless it has paid every claim filed against it with the Alien Property Custodian, whether the statute of limitations has run or not.

I have filed with the chairman a letter that I wrote, and several documents.

I want to thank the committee for its very gracious consideration.

Senator SHORTRIDGE. I do not think it is timely to present the case——

The CHAIRMAN. We will have a day or two on the floor on this case.

Senator SHORTRIDGE. I want an hour or two, if necessary, before the committee.

The CHAIRMAN. You do not want it during the hearings, but after the committee meets to consider the bill?

Senator SHORTRIDGE. At the pleasure of the chairman. I know the character of this committee, and therefore I hope that they will hold in suspension the subject matter until I present what I feel warranted in presenting to the committee in respect to this whole matter.

The CHAIRMAN. Our minds are perfectly open.

Senator SHORTRIDGE. Including the so-called hearing before Judge Deasy, who was at that time a candidate for office out there.

Senator REED. I was unable to be present, Mr. Chairman, when Mr. Hoffstot testified. I understand that he wishes to put in as a part of his testimony something that occurred in the hearings before the Ways and Means Committee on the bill which was pending a year ago.

The CHAIRMAN. That permission was granted, and he was told to mark whatever he wanted, and it would be made a part of the record.

Senator REED. I think it only fair to the committee to say while Mr. Hoffstot is here that the firm of which I am a member, in Pittsburgh, represents him in some of his matters.

Mr. HOFFSTOT. But not in this matter.

(The matter desired by Mr. Hoffstot to be inserted in the record will be found at the conclusion of is statement.)

STATEMENT OF E. H. BOLES, REPRESENTING THE LEHIGH VALLEY RAILROAD CO.

The CHAIRMAN. Do you represent the Lehigh Valley Railroad?

Mr. BOLES. Yes, sir.

Senator KING. You are a lawyer, I suppose, Mr. Boles?

Mr. BOLES. Yes, sir.

We do not in any way oppose the passage of this bill, but offer an amendment for certain reasons which I will present.

The Lehigh Valley Railroad Co. has a claim arising out of the destruction of the Black Tom Terminal at Jersey City in July, 1916. At that time the terminal and adjoining warehouses and a vast amount of munitions which were there in course of transportation to the Allies were destroyed by fire and explosion.

We are prepared to prove, and have been for a long time prepared to prove, that the fire and the explosions which followed were caused by the German Government.

The CHAIRMAN. Has not your claim been allowed by the Mixed Claims Commission.

Mr. BOLES. Unfortunately, the Mixed Claims Commission has not had an opportunity to pass upon it; and that is not the fault of that commission. They have done a wonderful job over a great number and a vast amount of claims, and they have been most cooperative and helpful in this matter.

The CHAIRMAN. When did you file your claim?

Mr. BOLES. What would amount to a summons or the notice of the claim was filed back in 1924; I think it was the early part of 1924. The actual memorial, which amounts to the complaint in the matter, was not filed until March, 1927.

For reasons which were not our fault nor the fault of the Mixed Claims Commission, we have been diplomatically dragged along by

the German represenatatives, and there was considerble talk of settlement.

The CHAIRMAN. On what date was this explosion?

Mr. BOLES. July, 1916.

The CHAIRMAN. Before we entered the war?

Mr. BOLES. Before we entered the war.

Senator MCLEAN. What do you mean by the German representatives?

Mr. BOLES. The German agent.

Senator REED. How much is your claim?

Mr. BOLES. About $11,100,000.

Senator REED. What action do you wish this committee to take in order to give you the relief you need?

Mr. BOLES. We feel that there is no way in which we can get a trial unless we can have a spur or an incentive put on the German Government to get action in the matter and come to a trial.

Senator REED. Wherein does it differ from any other claim before the Mixed Claims Commission?

Mr. BOLES. I do not suppose it differs at all from any other sabotage case, but there has not been a sabotage case ever tried.

Senator REED. The Mixed Claims Commission does not deny that it has jurisdiction, does it?

Mr. BOLES. Oh, no; it does not deny that it has jurisdiction, but the Mixed Claims Commission has not the power to force the German Government to try this case. What will undoubtedly happen, and it is our confident belief in view of the way that we have been diplomatically maneuvered along the last three years, is that the Mixed Claims Commission will disintegrate, perhaps. There will be deaths and resignations; witnesses will die, and the thing will go on for 5 or 10 more years, and we will finally be relegated to a case before Congress.

Senator REED. I do not understand why you can not go ahead and prove your case, and if the German Government does not care to put in any defense, all the better for you.

Mr. BOLES. The Mixed Claims Commission has no power to make an award by default. They have no power to do that. There must be a trial of the merits.

The CHAIRMAN. If that were the case, the Mixed Claims Commission never could have settled a case if the German representatives refused to talk.

Mr. BOLES. That is the case.

Senator EDGE. As I understand it, Mr. Boles, the difference in your case and the many cases that the Mixed Claims Commission have adjudicated and decided is that your case relates to the acts of the German Government that have never been reviewed by the Mixed Claims Commission in any case?

Mr. BOLES. That is true.

Senator EDGE. And that no case in which sabotage is involved has yet been tried by the Mixed Claims Commission?

Mr. BOLES. That is true; and by the very nature of these cases, they will delay them indefinitely if they can.

Senator EDGE. And, further than that, if the German representatives will not agree to try the case, the commission is helpless?

Mr. BOLES. Exactly so.

Senator SHORTRIDGE. Is that the law?

Mr. BOLES. Yes.

Senator REED. Let us understand this. I do not know what you mean by judgment by default without a trial on the merits. Certainly the Mixed Claims Commission will hear your witnesses, will they not?

Mr. BOLES. Yes, sir.

Senator REED. And if after hearing your witnesses there are no witnesses to contradict them, a judgment then rendered on the facts is not a judgment by default in any sense?

Mr. BOLES. I do not understand that the Mixed Claims Commission have authority to enter an award under such circumstances. I am quite sure they would not.

The CHAIRMAN. I can not quite understand it, because there are only about 200 cases like that.

Senator EDGE. I would like to get that settled.

The CHAIRMAN. There are about 200 cases yet before the commission that have not been determined, and the great bulk of those cases are of one character, and more than likely one decision would answer them all.

Senator EDGE. What do you mean—sabotage cases?

The CHAIRMAN. Yes. Nearly all of the ones that are left are of that kind.

Senator MCLEAN. Would they not all involve questions of fact?

The CHAIRMAN. Yes.

Mr. BOLES. I should think so.

The CHAIRMAN. That is a very simple thing.

Mr. BOLES. But these cases would be disposed of in a year if Germany wanted to get at them.

Senator SHORTRIDGE. How many members are there on the Mixed Claims Commission?

Mr. BOLES. There are two and an umpire.

Senator SHORTRIDGE. You filed your claim with the commission, did you?

Mr. BOLES. Yes, sir; the American agent filed it.

Senator SHORTRIDGE. You have been ready and willing and anxious to proceed to a hearing?

Mr. BOLES. Yes, sir.

Senator SHORTRIDGE. Do I understand you to say that the law is that the commission may not hear and determine and render a valid award unless the defendant, we will call him, consents?

Mr. BOLES. Unless the defendant introduces evidence with respect to liability.

Senator SHORTRIDGE. If he stands mute or, as Senator Reed suggested, puts in no evidence questioning or impairing the testimony of the claimant, the commission may not under the law proceed to judgment?

Mr. BOLES. I so understand the law, Senator.

Senator SHORTRIDGE. Then, in other words, you say that it is optional with the defendant to stand mute or to put in no evidence and to block and prevent a judgment?

Mr. BOLES. Of course if the German member of the commission, after our case had been fully put in, should say, "We have no defense," the case then would never go to the umpire. The German

member and the American member would then agree to an award, and I have no doubt that that would be a valid award.

But if the German member of the commission, after our case was fully in, should say, "We are not now ready"—that is, the German agent, who is really the German lawyer before that particular court—if he should say, "We are not now ready; we want additional time to investigate this, that, or the other thing," they can maneuver the thing along indefinitely, and there is no power on the part of the commission under those circumstances to make them come to trial on a particular day, or if they fail to come to trial on that day, to say, "Judgment is now entered by default."

Do I make that clear?

Senator REED. What provision do you propose that we should insert in the bill to meet this situation?

Mr. BOLES. The provision that the present German property shall be retained until the Mixed Claims Commission has disposed of the cases now pending before it.

Senator EDGE. You mean 80 per cent?

Mr. BOLES. Yes. This does not in any way interfere with the 20 per cent fund, the special Treasury Department fund. In effect, it will expedite the payment of the claims of over $100,000 which, in the aggregate, are about four-fifths of the total, because the sooner the Mixed Claims Commission has disposed of all cases and either dismissed them or entered awards, the sooner the pro rata distribution can be made out of the 20 per cent fund in respect to the claims over $100,000.

So that the retention of this property as a spur for the trial and disposition of all cases will expedite the payment of American claims.

Senator SHORTRIDGE. Do you claim that under the law the German member of the commission can postpone a judgment for an award, and that that can only be made when he agrees to take up, hear, and determine the matter?

Mr. BOLES. By saying that they are not ready they can postpone it indefinitely.

Senator EDGE. Have you made application to have your case heard?

Mr. BOLES. Our memorial was filed last March, and while it is customary for answers to be filed in 30 or 40 or 60 days, it was 9 months before the Germans filed an answer, and it was only about two weeks ago when they filed their exhibits.

The CHAIRMAN. Judge Parker will be here to-morrow, and this will be brought out.

Mr. BOLES. The amendment that we propose would appear on page 32 of H. R. 7201. After the (n) and before the word "unless" on the third line, page 32, insert the following——

Senator EDGE. What section?

Mr. BOLES. That is in section 12. It begins at the bottom of page 31. Insert these words:

Until the Alien Property Custodian shall have determined that all claims now pending before the Mixed Claims Commission have been by it finally disposed of—

and then it goes on as it now reads.

Senator EDGE. The effect of that amendment incorporated in the bill would simply have the net result that the Mixed Claims Com-

mission could give a decision in every case that they still have pending before them?

Mr. BOLES. Yes, sir.

Senator EDGE. In other words, that you would be permitted to try this case out before the money was actually distributed?

Mr. BOLES. Yes, sir.

Senator KING. Have you not been sued by a number of persons who suffered damage by reason of the explosion?

Mr. BOLES. Yes, sir.

Senator KING. Did you plead in those suits liability because of the alleged criminal acts of the German Government?

Mr. BOLES. We did in the early suit, Senator. In fact, that very point was raised by the plaintiffs in the first few litigations.

Senator KING. Did you offer proof?

Mr. BOLES. No; because the first cases that were tried in the Supreme Court of New Jersey went along on the theory that the property was insufficiently guarded. They did not come up as common-carrier cases, but as straight tort or negligence cases, and very wisely and astutely the lawyers for the plaintiffs tried their cases on the theory that the negligence consisted of an insufficient guarding of the premises and put in as a part of that plea the newspaper clippings to the effect that there were German spies about and that it was well known that there were acts of sabotage directed from abroad to destroy property and ammunition destined for the Allies. They used that very fact against us, so that whether it was a fact at that time or not, wnether we had full proof at that time or not, became immaterial, because the case was tried on the theory that, "Assuming it was destroyed by the Germans, you did not have enough protection there to keep the Germans away. Therefore, you should pay us." Some juries believed that and some did not. Some found for the defendants in spite of that.

Senator SHORTRIDGE. Amounting to negligence?

Mr. BOLES. Yes. Some juries decided it was negligence and some did not.

Senator KING. Have you offered any proof before the Mixed Claims Commission in support of your contention?

Mr. BOLES. We never had an opportunity. As I stated, we filed our memorial.

Senator KING. Has not some evidence been introduced before the Mixed Claims Commission with respect to the Black Tom explosion?

Mr. BOLES. There was a claim presented on behalf of a man who was a police officer for the railroad, but I am not sure whether any evidence has been presented in that case or not. His widow employed a lawyer.

Senator KING. In any of those suits that were brought in New Jersey, growing out of this explosion, was there any evidence tending to show that this explosion resulted from the manufacture of bombs upon any of these interned ships?

Mr. BOLES. Not in those litigated cases, because the sabotage question was really eliminated from the cases because every case substantially followed that first well thought out theory that we were negligent for insufficient protection.

Senator EDGE. Are you prepared to submit evidence to the Mixed Claims Commission?

Mr. BOLES. We are prepared to submit trunkloads of evidence.

Senator KING. That bombs were made on these vessels

Mr. BOLES. Yes, sir; we have some on that, too.

Senator BAYARD. You testified that the gross amount of your claims was about $11,000,000?

Mr. BOLES. Yes.

Senator BAYARD. Does that include any of the judgments that you suffered and paid at the instance of these plaintiffs?

Mr. BOLES. Yes, sir.

Senator BAYARD. Not actual property damage that you yourself suffered, but the damage that you yourself paid to the plaintiffs by reason of it?

Mr. BOLES. Yes.

Senator SHORTRIDGE. Those cases became final and you had to pay certain judgments running against your company?

Mr. BOLES. Yes. They have all practically been disposed of.

The CHAIRMAN. Thank you, Mr. Boles.

Mr. BOLES. I ought to say to the committee at this point that in mentioning the German member of the commission and the German agent I did not intend to imply that they, or either of them, have personally or intentionally delayed the consideration of our case; but I do say that the German Government officials in Berlin, according to our firm belief, caused the delay to which our case has been subjected.

The CHAIRMAN. Is Mr. Paul in the room?

Mr. STEPHEN PAUL. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Paul, are you a British subject?

Mr. PAUL. Yes, sir.

The CHAIRMAN. What is your business in Washington?

Mr. PAUL. I have been asked by the representatives of the Deutsche Bank to attend upon your committee.

The CHAIRMAN. Are you connected in any way with the British Embassy?

Mr. PAUL. No, sir.

The CHAIRMAN. Are you an attorney?

Mr. PAUL. No; I am a banker. I am vice president of the J. Henry Schroeder Banking Corporation, of New York.

Mr. H. W. BISSELL. Mr. Chairman, may I interrupt for a moment. I am representing the Deutsche Bank, the Disconto Gesellschaft of Berlin and the Dresdner Bank, who have asked Mr. Paul to come here for the reason that Mr. Paul is familiar with the liquidation of German branch banks in Berlin. I make the suggestion that I might make a few preliminary remarks, and then, if the committee desires to question Mr. Paul, they can do so.

The CHAIRMAN. Mr. Bissell, I called your name twice and you were not here. If you want to you may speak now for a few moments, and if the committee desires to hear Mr. Paul, we will call him again.

STATEMENT OF H. W. BISSELL, REPRESENTING THE DEUTSCHE BANK, THE DISCONTO GESELLSCHAFT, AND THE DRESDNER BANK

Mr. BISSELL. Mr. Chairman and gentlemen of the committee, as I just stated, I represent the Deutsche Bank, the Disconto Gesellschaft, and the Dresdner Bank. I might add that in any sugges-

tions I make I am acting in cooperation with Doctor Kiesselbach, who represents the great majority of German claimants.

I have no amendments to offer. I simply wish to say a very few words with respect to two proposed amendments which have been suggested to this committee.

In the first place, an amendment has been suggested under which the property of German banks held by the custodian would be discriminated against and would not be returned to the German banks until the awards of the Mixed Claims Commission in favor of American banks having mark deposits before the war in those German banks had been paid out of the seized property.

This suggestion is not new. It was made before the Ways and Means Committee at the last session of Congress. At that time I appeared before that committee and I filed a memorandum, and whether for the reasons set forth in that memorandum or for other reasons, no such provision was adopted, and I presume that the same reasons will prevent the adoption of any such provision at the present time.

Senator KING. Are those Americans to whom you have just referred and who have deposits in the banks claimants before the Mixed Claims Commission, and have their claims been reduced to judgments?

Mr. BISSELL. In practically all cases I believe they are. The claimants to which I refer are for the most part American banks, and I might add this, that in so far as I know no American bank has asked that any such provision be inserted. It has been asked solely, I believe, by some German owners who would like to get 100 per cent return of their property, and they think that if the German bank property should be applied to the payment of some of the mixed claims awards, then possibly they could get 100 per cent return of their seized property.

Senator KING. Why should not the German banks—and I ask for information without any prejudice one way or the other—who receive awards from the Mixed Claims Commission and who are owing American nationals and those American nationals have reduced their claims to judgments before the Mixed Claims Commission, consent? Why should not this bill provide that out of the amount due the German banks which is now in the hands of the Alien Property Custodian, there should be sufficient applied to liquidate these claims of American nationals which have been reduced to judgment?

Mr. BISSELL. In substance, the answer to your suggestion is this: A distinction must be made on this account; it is one thing to establish a claim against a German bank which was a pre-war debtor, and it is quite another thing to obtain an award from the Mixed Claims Commission. The action or the procedure in the two cases would go on entirely different grounds. Let me make that more specific. If any American pre-war creditor of a German bank; in other words, any American who had a mark deposit with the German bank, should go into a court, or should proceed under section 9 of the trading with the enemy act to recover upon his claim against the German bank, his allegation would be that he had so many marks on deposit in the German bank at that time. Now, the question is, what is he entitled to receive from the German bank?

The United States Supreme Court in the case of Deutsche Bank against Humphrey has held that the only obligation on the German bank is to pay marks. The amount of the depreciation of the mark does not enter into the question at all. A German bank is no more obliged to pay some pre-war values in dollars upon the mark account than an American bank at the present day is obliged to return double the amount of a depositor's account because the dollar is now worth perhaps one-half the purchasing power it was worth 10 years ago. That is what the United States Supreme Court has recently held. In other words, the Deutsche Bank, for example, has no obligation in law to pay anything except marks, however much they may be depreciated.

Senator KING. Suppose that Senator Reed and myself had been in Germany, say, in 1913 or 1914. We went to the Deutsche Bank and we handed the cashier 100,000 gold marks and said, "You will buy us United States steel," and he bought United States steel stock; and subsequently that stock was sold by the bank; that is, it carried it right along and we sold it and the proceeds were deposited there in the bank. Senator Reed and I present our claim here to the Mixed Claims Commission and get a judgment for the amount. Under your theory we ought not then to ask the bank to pay that, but we ought to ask the German taxpayers to pay it, or the German nationals whose money is here, and exonerate the bank from the payment.

The CHAIRMAN. The only mistake in that statement, Senator, is that there were no gold marks.

Senator KING. Yes; in 1913. I am speaking theoretically.

Of course, it might have been a transferred account. We had a deposit there in the bank, and we just gave our check for 100,000 gold marks.

The CHAIRMAN. You may have put in $100,000 worth of gold and they credited you up with marks, but it would be your loss.

Senator KING. I wanted to get your view as to whether, under those circumstances, we would have to deduct from the poor German nationals here whose property is in the hands of the Alien Property Custodian and have them pay us and the bank get the benefit.

Mr. BISSELL. The bank still has and will carry its entire legal obligation; and, in point of fact, it will carry more than its legal obligation. According to my argument already made, that legal obligation is practically nothing, because the mark has depreciated to nothing; but the legal answer, as I say, has been settled by our Supreme Court when they said that is the only obligation of the bank. I will refer to the moral question in a second.

But the awards of the Mixed Claims Commission are awards against the German Government and not against the individual bank which had the deposits. Now, what is the basis of those awards? The awards on account of deposits of American banks in German banks have been made on the basis of 16 cents per mark, which is almost the pre-war rate of exchange. Now, why? A dispute first arose between the American agent and the German agent as to what payment should be made. The American agent claimed that the full pre-war rate of 17.4 cents per mark should be paid, and he based his argument on the contention that Germany's exceptional

war measures had caused losses to the American depositor. The German agent contested the point, and his claim was that that had nothing to do with the depreciation of the mark.

Senator REED. The pre-war value of the mark was 23½ cents, approximately, was it not?

Mr. BISSELL. When I say pre-war I am referring to the rate of exchange just before the United States entered the war. In point of fact, the Mixed Claims Commission found on investigation that that rate for the month preceding the war was 17.4 cents per mark.

Senator REED. Excuse the interruption.

Mr. BISSELL. They compromised in that contest between the American agent and the German agent, and it was agreed that a flat rate of 16 cents per mark should be applied on all of these deposits, and that they should not in each case go into the question of whether a loss was caused by exceptional war measures, but that this flat rate should apply to all. Interest was compromised at the rate of 5 per cent from January 1, 1920, chosen perhaps as a rough average of the time when the war measures caused the losses.

Now, a condition was imposed as a part of that agreement, and that condition was agreed to by the American agent who represents our State Department, and was agreed to by the German agent, and the condition was that no American claimant should be entitled to an award under this compromise arrangement of 16 cents unless he should waive any right to proceed against the individual German debtor in any court or under section 9 of the trading with the enemy act.

Senator KING. Where is that agreement found and who entered into it?

Mr. BISSELL. That agreement was entered into between the American agent and the German agent and the Mixed Claims Commission, and the German Government gave its consent to it. Of course,the American agent is a representative of the State Department.

Senator KING. Of course, the American agent had no power to bind any American claimant if he did not want to be bound.

Senator REED. But they could not take advantage of his agreement unless they agreed to it.

Mr. BISSELL. The condition was imposed that they should not obtain an award under this compromise unless they waived any rights to proceed against an individual German debtor in any court or under the trading with the enemy act.

Senator KING. Of course, that means in the case of the $100,000 of Senator Reed and myself which was placed to our credit in the Deutsche Bank in 1913 or 1914, before the breaking out of the war, and which was carried there as a deposit and on which we were getting interest, they took the money which we deposited and liquidated one of their debts. Supposing they were owing you $100,000, and when we made our deposit they just transferred the amount we paid you and paid off one of their liabilities but carried our names there as a debt. Then Senator Reed and I could come here and get judgment and go to these ship men and compel them to subtract from the amount we may award to them a proportion of the amount of our judgment to pay us for the obligation that the bank owed us, and they had gotten the full benefit of it by paying off one of their obligations.

Mr. BISSELL. I think, Senator, that the operations of a bank can not be reduced to such a simple formula.

Senator KING. But that is the effect of your proposition.

Mr. BISSELL. My proposition is that the bank is under no legal obligation to pay anything except marks, however much they are depreciated; that any right to a greater value is a right against the German Government. It is based on the theory advanced by the American agent, contested by the German agent, but compromised on the theory that the German war measures caused the losses. That is the only reason for departing from the regular principle accepted by the United States Supreme Court that a deposit is payable only in the currency of the deposit and depreciations are ignored.

Senator KING. But the German Government does not pay Senator Reed and myself that resort to this fund in the hands of the Alien Property Custodian, and we would subtract from the amount due the German shipowners and others a proportionate amount so as to pay our claim of 100,000 marks on the valorization of 16 cents per mark.

Mr. BISSELL. I do not know that I altogether follow you. That is, if you obtained any value greater than the zero value of the marks, it would be through an award of the Mixed Claims Commission?

Senator KING. Exactly.

Mr. BISSELL. And that the money due to the shipowners would, under the present bill, be applied in part toward paying American claims?

Senator KING. We take from all of the German nationals whose money is in the hands of the Alien Property Custodian sufficient to pay us our claim; so that the shipowners would pay some and the small German depositor would pay some.

Mr. BISSELL. It is true that the entire funds, in so far as they are available to pay Germany's obligations would be under obligation to pay this.

Senator KING. But the German nationals whose property we hold are compelled to pay Senator Reed and myself the $100,000 of which your bank got the advantage.

Senator SHORTRIDGE. Do I understand the position of the bank question to be this: If you received a deposit of $100,000 in gold when the mark was worth 23½ cents, that as of now, for example, the bank feels that it is discharging its legal obligation by paying in marks of no value whatever? Is that right?

Mr. BISSELL. You mentioned a deposit of 100,000 in gold?

Senator SHORTRIDGE. Yes.

Mr. BISSELL. Do you mean by that that the deposit was so much in bulk gold?

Senator SHORTRIDGE. Yes; I would say in gold.

Mr. BISSELL. May I ask whether you mean further that the depositor requested solely an account in marks, or did he ask that the gold be kept in specie?

Senator SHORTRIDGE. I do not know whether it has any bearing or not, but to gratify my own mind, I would like to know this: Supposing I had walked into a German bank and deposited there in specie one hundred thousand in gold, but the bank in its accounting had credited me with so many marks on the basis of 23½ cents, which would mean that on their books I would stand as being entitled to so

many marks as of that value at that time. Is it your claim that thereafter, if the mark became of absolutely no value whatever, you could, nevertheless, give me some paper and discharge the legal obligation?

Senator REED. The Supreme Court has so held.

Mr. BISSELL. The Supreme Court has so held, but if you assume that the depositor in making his deposit simply said, "I wish to make a deposit; here is so much gold; I wish to have my account credited in marks"; that either must be true in fact or implied, or else he had put it in the bank under some special arrangement that it should be held in a safe deposit box or something of that sort. If no arrangement were made the bank was justified in assuming that it was simply a deposit just as if he brought in so many mark checks.

Senator SHORTRIDGE. Mr. Chairman, there are five members of this committee who are members of another committee which is holding a meeting at 3 o'clock this afternoon. So we will ask to be excused.

Mr. BISSELL. I had not intended to go into this in such length, but in view of one or two of the remarks made by the Senators, I would like to say one word on the moral phase of it. It seems to be assumed that when a bank has received a deposit in the shape of gold and has placed credit in the shape of marks on the books, that the bank is in a position to profit if the marks depreciate to nothing because the bank still has the gold. Of course, banks do not do business in that way.

The CHAIRMAN. I do not assume any such thing.

Mr. BISSELL. Furthermore, I think any one familiar with banking is perfectly well aware of the fact that the mark liability in general is balanced in any well regulated bank by mark assets; and I think I can further assume that you gentlemen are aware of the fact that any one familiar with international banking knows that the German banks suffered by the depreciation of the mark in substantially the same way that other German interests and individuals suffered.

In point of fact, most of the German bank investments after the was were in German treasury bills. It is about the only thing they could invest in. Prior to that they invested largely in commercial bills of exchange and in short term loans. After the war started it was practically impossible to do that. About the only investments they could make were in the treasury bonds. In other words, they were in the same boat as their customers, and in order not to gamble they had to have mark assets to substantially parallel their mark liabilities. So that from the moral side, in my opinion, there is no reason for asking the German bank to revalorize the marks. If there is any justice in requiring the revalorization it is as a matter of justice against the German Government, and that is taken care of under the Mixed Claims Commission.

As I pointed out, to mention the point once more, it would be practically a breach of faith on the part of the United States, in view of the agreement reached between the American agent and the German agent. It would necessarily have the effect of upsetting every award which has been given under this compromise arrangement. You certainly could not expect the German Government to consent to such awards or to recognize them as having any validity when the awards were made under the condition that all rights had

been waived to the seized property, because if you adopt such a provision as here suggested you would take the property held by the Alien Property Custodian in spite of this waiver and apply it to those precise claims.

The CHAIRMAN. You mean the suggestion that was offered by the last witness?

Mr. BISSELL. Well, I believe it has been offered by two witnesses here. I think the last witness offered it.

Senator MCLEAN. You want the House bill?

Mr. BISSELL. Yes, sir.

Now, there is one other proposed amendment that I would like just to say a word about, and I am not as familiar with the subject as Mr. Stephen Paul, who is here available to the committee. But perhaps just a word to place before you this matter is justified. Certain rumors have been aired to the effect that certain German banks were enriching themselves at the expense of their customers, particularly under the administration of the British trustee in London; and it is suggested that for that reason any of their property in the hands of the Alien Property Custodian probably will not reach their customers here. It seems to me it hardly ought to be necessary to attempt to repel such an attack on banks which have held the highest reputation for integrity for years, and which have been dealt with by New York institutions on that basis.

The rumor, I say, has been aired here. I have not heard of one single instance of any such robbery laid before this committee. There may have been here and there, as there have been in the administration of the custodian's office here, inadvertent errors. I do not know of any error which has resulted in enriching any German bank. Since it is simply a rumor I shall not go to any great length in attempting to disprove it. It seems to me the burden is upon anyone who makes such a charge to come forward with some real proof.

But I think it might be worth while to point out that there was not any particular opportunity for the German banks to rob their customers, even if they desired to adopt such a course. When the war broke out in England the German branch banks, such as the Deutsche Bank, and the Dresdner Bank were continued in operation by the British authorities. They deemed it best not to wind them up at that time. They were, however, of course under the supervision of the British authorities.

Now, among the securities which some of the German branches had were shares in various companies. Those that belonged—let us take for example the case of the Deutsche Bank of London. Those that belonged to the Deutsche Bank would naturally go in what the banks would carry as an investment account. They could not well carry the investment accounts, and the customer's accounts in the same account. It would be ridiculous from a bookkeeping and and accounting standpoint. They would have to be segregated. They did segregate them. Therefore the accounts belonging to the customer would appear on the books of tke bank in such a way that it would appear to anyone liquidating the bank or its affairs. It is true that in some of those cases the securities were sold, but they were sold only after they got the permission of the customer, whose name appeared on the books. It was under the British authorities, and the

bank got permission to communicate with the true owner in Germany to get his permission, if possible, to sell the securities. This arose largely because of the fact that a large part of these customers' securities were only partly paid for, and the bank had a lien for the balance of the purchase price, and it was desired, so far as possible, to liquidate such accounts. But they did not do it in the beginning without the consent of the customer.

The CHAIRMAN. You say not in the beginning. Have they since done that?

Mr. BISSELL. I mean immediately after the outbreak of the war. But that was done after 1918, since the British authorities then decided to liquidate these banks. They did not continue them in operation. Prior to this change of policy there were in some cases, I understand, claims made by British creditors, or persons who had accounts with the German branches. I understand that one or two errors may have crept in due to this fact: A German broker might receive an order from his customer, we will say, in Berlin, or any other German city, to purchase certain shares in London. The German broker would perhaps go to the Deutsche Bank in Berlin and ask them to arrange to have it purchased through their branch in London. The Deutsche Bank would send word to purchase these shares, and they might very likely get them in the name of the broker in Berlin, and in his name the Deutsche Bank in Berlin would hold the shares. When the British creditor of this Berlin broker filed his claim under the British trading with the enemy act, the branch bank officers pressed the fact that it could not be told as to whether these securities really belonged to this broker or not; that they might belong to a customer of his, and probably did. But for a time that claim was ignored and the British authorities, under the trading with the enemy act, in a number of cases issued vesting orders with authority to sell such securities for the account of the broker whose name appeared on the branch bank's books. In some cases the broker's debt was settled out of securities that really belonged to some customer behind the broker. But that was over the protest of the bank, and it was only shortly after that that the British trustee and the British authorities were persuaded that that was not just, and that practice was discontinued, and thereafter no order for sale was made until full proof of ownership was supplied.

The CHAIRMAN. There are some seven or eight unknown claimants. Do you know who they are?

Mr. BISSELL. I have not any idea. I do not know who they are. I never have heard anything about it.

Senator REED of Pennsylvania. German claimants, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. BISSELL. So far as my contact with these German banks is concerned, I never heard that they were in any way involved. As you know, they have various amounts in their own names.

The CHAIRMAN. Yes. Of course, I have heard all manner of rumors as to who the seven or eight claimants are, but I have never found anybody who knows who they are.

Senator GERRY. Are the amounts large, Mr. Chairman?

The CHAIRMAN. Yes; quite large.

Mr. BISSELL. I have no idea who they are. There are about $7,000,000, I understand.

The CHAIRMAN. Yes; about $7,000,000.

Mr. BISSELL. In 1918 the British changed their policy and decided as rapidly as possible to liquidate the English branches of the German banks. And after that customers' shares were sold without their consent, but they were sold for their accounts as they appeared on the books of the branch banks.

It was all done in a businesslike way and in accordance with regular procedure. There was no opportunity for the banks to defraud their customers. They did not control the procedure.

Finally the Versailles treaty came into effect and under this treaty all of this property of the German banks, whether belonging to the German banks themselves, or their customers, was seized, and the British Government proceeded to liquidate the affairs of the branch banks as separate entities. For example, they did not permit neutral or other claimants to recover, on any claims they had against the head office, from the branch office. They operated them as independent entities.

Now, they continued to do that under the clearing office scheme. They were operated as entities. And then if there were any surplus upon the liquidation in favor of Germany, that would be thrown into the clearing office. The net result would, of course, be the applying of customers' accounts and German branch bank accounts under the clearing-office scheme, and the only remedy of any German who lost his property, whether it was the Deutsche Branch Bank, or some customer of the Deutsche Branch Bank would be to file his claim under this clearing-office arrangement. The German property was thrown into the clearing office and applied to the payment of debts owed by German nationals to English nationals, and the German national whose property was so thrown into the pot would have to apply to Germany for payment. Now, if there were any mistakes in the appropriation of the property, whether it belonged to the bank, or some customer behind the bank or broker, that would all be regulated under the procedure for compensating the German nationals. I know of no basis for assuming that it is not going to be carried on under civilzed procedure, and upon strict legal principles.

I just want to say a word—it will take me only a half minute—that it seems to be suspected that if these German banks obtain the property held in this country they will attempt to rob their customers. I think it is a sufficient answer, and it can be easily verified, that since the Winslow bill was passed, the $30,000,000 of the German banks standing in their names at the time, has been depleted by many hundreds of claims, which are no more nor less than the claims of the customers for their property. Any man who has been familiar with that work knows that the German banks have invariably aided the customers in getting their property. No bank could be named which has not done this consistently. I know of no reason for placing in this bill as a gratuitous insult an amendment that these banks must prove that they are not going to rob their customers or otherwise they can not get their own money back.

Now, Mr. Paul was manager of the London branch of the Dresdner Bank for a time, and if the committee wants to ask him anything, he will be glad to answer questions.

The CHAIRMAN. I think you have covered the subject very well in your statement, as well as anything that Mr. Paul could give.

Senator REED of Pennsylvania. Who asks for this action that you are resisting?

Mr. BISSELL. The witness, Mr. Lafferty, proposed it, and I believe one other witness proposed, as an amendment, to apply the German bank property to pay the awards of the Mixed Claims Commission against these German banks.

Senator REED of Pennsylvania. I do not think we need to hear Mr. Paul.

The CHAIRMAN. I do not think so. I think you have covered the ground very well.

Mr. BISSELL. I have a statement, Mr. Chairman, that I would like, if you approve, to make a part of the record.

The CHAIRMAN. Without objection, that may be done.

(The statement referred to is as follows:)

SHOULD THE GERMAN PRE-WAR MARK DEBTOR BE MADE TO PAY OUT OF HIS FUNDS HELD BY THE ALIEN PROPERTY CUSTODIAN THE AWARDS RENDERED AGAINST GERMANY BY THE MIXED CLAIMS COMMISSION IN CONNECTION WITH SUCH DEBTS?

The settlement of war claims bill of 1928 proposes that the awards of the Mixed Claims Commission, United States and Germany, be paid out of certain funds to be made available for that purpose under the bill.

Among those awards there are many which are based upon private debts arising out of pre-war transactions between American and German nationals.

Many of these German debtors again own money or other property which is now being held by the Alien Property Custodian.

The question has been raised why the money or property belonging to these debtors should be returned to them to the extent of 80 per cent thereof, as proposed, while their debts due to American creditors are paid out of a fund to which they have contributed only to the extent of 20 per cent of their property.

Is it not the only natural thing, it has been said, to use all of the debtor's property which is available in the hands of the Alien Property Custodian for the payment of his debt? Is it tolerable to let the debtor go free, release 80 per cent of his property, and make others pay the debt?

This argument sounds plausible enough and still it is not tenable for the following reasons:

The awards rendered by the Mixed Claims Commission upon private debts are not judgments against the debtor, they are judgments against the German Government.

These awards sound in dollars, the debts sounded in marks. The commission in awarding dollars instead of marks has applied a fixed rate of exchange of 16 cents per mark agreed upon between the two Governments as the basis for Germany's obligation to make good for the nonpayment of the debts involved. This rate of exchange does not apply as between the creditors and debtors themselves. It fixes exclusively the amount due from Germany.

In consequence, using the debtor's money for payment of awards in debt cases would mean making the private debtor pay Germany's debts; in other words, it would amount to confiscating private property in satisfaction of a Government's war obligation.

But, it may be asked, why does not the German debtor owe dollars if the German Government does? Did he not receive good American money before the war? Why should he not be bound to pay in the same currency?

The answer has two aspects, a legal and a moral one.

1. THE LEGAL ASPECT

At the outbreak of the war between the United States and Germany a great many American nationals had mark debts outstanding in Germany. The bulk of these debts consisted in bank balances to the credit of American banks arising out of deposits and other transactions during the first part of the war. It is a

well-known fact that business relations between the two countries, and in particular between the banks on both sides, were maintained until the very last moment. When the United States entered the war payment became impossible because—quite apart from the technical side—the Governments by their war legislation forbade all intercourse between their respective nationals. The treaty of Versailles imposed the obligation upon Germany to at once repeal her "exceptional war measures," including the prohibition on payment of debts due to enemy nationals.

The law complying with this treaty obligation was enacted on January 10, 1920, and as far as the German war legislation is concerned the German debtor would now have been free to pay his debt. He was, however, prevented from doing this by the treaty itself, which provided in article 296 (a) that "each of the high contracting parties shall prohibit, as from the coming into force of the present treaty, both the payment and the acceptance of payment of such debts and also all communications between the interested parties with regard to the settlement of the said debts otherwise than through the clearing offices." The purpose of this article was to prepare the way for the establishment of the so-called clearing system which created a governmental machinery for collecting and paying pre-war debts. Domestic law carrying out the treaty provision was enacted in Germany on August 31, 1919. The "clearing embargo" on debts was and had to be effective as against every allied or associated power including the United States. Under article 296 (e) of the Versailles treaty as incorporated into the treaty of Versailles Germany was not in a position to permit direct payments to American nationals until the United States had decided whether or not it would adopt the clearing system. Not until one month after the ratification of the Berlin treaty did it become known to the German Government that the United States preferred not to make use of this machinery. Immediately afterwards the prohibition on payments was lifted by special act of December 17, 1921, which became effective on December 23 of the same year. In the meantime the mark had gone down to one-fiftieth of its peace-time value and the American creditors when payment was offered to them naturally declined acceptance in so depreciated a currency. The German debtors on the other hand were not willing and in fact not in a position to pay anything else than what they actually owed; i. e., marks.

If the United States had adopted the clearing system this difficulty would have been removed by making the German Government the guarantor of its nationals' debts at the pre-war rate of exchange.

This solution being eliminated, the American creditors had two ways to seek recovery for their outstanding mark credits. They could either bring suit in equity under section 9 of the trading with the enemy act against money or other property held in trust for their debtors by the Alien Property Custodian, or they could file a claim with the Mixed Claims Commission, United States and Germany, established in pursuance of the agreement of August 10, 1922, between the United States and Germany. The first remedy is one directed against the debtor himself, the second is a remedy directed against the German Government.

A great many creditors have chosen the suit in equity under section 9. In the proceedings instituted by them before the United States courts they attempted to establish a basis for calculating the mark debts upon which their claims were based in dollars at the pre-war rate of exchange. The question has been decided against the American claimants by the Supreme Court of the United States in the case of Die Deutsche Bank Filiale Nurnberg *v.* Charles Franklin Humphrey, and was confirmed by decision in the case of Zimmermann & Forshay *v.* the Alien Property Custodian and the Wiener Bank-Verein of Vienna, Austria. (No. 224, dated November 23, 1926, and No. 180, dated May 16, 1927, respectively.)

In the Humphrey case the Supreme Court held as follows:

"An obligation in terms of the currency of a country takes the risk of currency fluctuations, and whether creditor or debtor profits by the change the law takes no account of it. Legal Tender cases, 12 Wall. 457, 548, 549. Obviously in fact a dollar or a mark may have different values at different times, but to the law that establishes it; it is always the same. If the debt had been due here and the value of dollars had dropped before suit was brought the plaintiff could recover no more dollars on that account. A foreign debtor should be no worse off.

"* * * Here we are lending our courts to enforce an obligation (as we should put it, to pay damages) arising from German law alone, and ought to enforce no greater obligation than exists by that law at the moment when the suit is brought."

In the Zimmermann & Forshay case, the Supreme Court held:

"The decision of the circuit court of appeals was right, and in view of the recent case of Deutsche Bank Filiale Nurnberg *v.* Humphrey, November 23, 1926, does not need extended reasoning. Here as there the debt was due and payable in the foreign country. The only primary obligation was that created by the law of Austria-Hungary, and if by reason of an attachment of property or otherwise the courts of the United States also gave a remedy, the only thing that they could do with justice was to enforce the obligation as it stood, not to substitute something else that seemed to them about fair. * * *

"The plaintiffs argue that they have rights under the treaty of August 24, 1921, between the United States and Austria. But the short answer is that their rights against the bank were ended before that treaty was made. They also urge that this is a suit under the trading with the enemy act. But so was Deutsche Bank *v.* Humphrey. That act did not turn the Austrian into an American debt and impose a new and different obligation upon the Austrian bank."

The Tripartite Claims Commission, before which the question came up as to whether Austria is obligated to valorize pre-war debts of Austrian nationals owing to American nationals, discussed more fully the question whether such right or valorization of pre-war debts arose under the peace treaty provisions (administrative decision No. II, May 25, 1927). In this decision the commissioner held as follows:

"In the absence of a treaty so stipulating, there is no warrant for requiring the payment in American currency at the pre-war rate of exchange of Austrian (Hungarian) public debts or debts of Austrian (Hungarian) nationals owing to American nationals which by their terms are payable in Austro-Hungarian or other non-American currency. A contract obligation of the Austrian (Hungarian) Government or of an Austrian (Hungarian) national to pay Austro-Hungarian kronen is exclusively a krone obligation and is unaffected either by the purchasing power of the krone in Austria (Hungary) or by the exchange value of the krone as measured by other currencies."

Long before the issuance of the above decisions, that is, prior to April 9, 1923, the majority of the American creditors of mark debts had filed claims with the Mixed Claims Commission. While this body is vested with jurisdiction to pass upon "debts owing to American citizens by German nationals," it has nothing to do with the debtor as individual; the claims before it are directed against the German Government alone. The question whether the German Government is obligated to valorize the mark debts of its nationals was a matter of dispute before the commission. It was finally solved by an agreement between the two governments under which Germany undertook to valorize those debts at the rate of 16 cents per mark under the condition, however, that the claimant on whose behalf the claim was brought waived his right of pursuing the private debtor himself before any court in the United States or in Germany and in particular under section 9 of the trading with the enemy act. The bulk of the American claimants in debt cases have availed themselves of the opportunity offered by this agreement, and they have executed the waivers and many of them have received awards at the rate of exchange mentioned above.

It appears clearly from these facts that the awards rendered by the commission in mark-debt cases do not establish a dollar debt as against the private debtor and that these awards are no charge against the funds held in trust for such debtor by the Alien Property Custodian. As shown above the only way for the creditor to recover out of these funds is the suit in equity under section 9 of the trading with the enemy act and there he can only recover in marks or the equivalent of the mark in dollars at the time when suit was brought. If it is now suggested to except from the contemplated general return of German private property the money or other property belonging to German private debtors whose debts were involved in a proceeding before the commission it would amount to treating the awards of this commission as if they were judgments rendered by United States courts under section 9. Such a suggestion would disregard the fact that the commission's awards are being rendered against Germany; it would overlook the fact that they are based on an agreement between the two Governments which makes it a condition precedent to entering an award on behalf of an American creditor that this creditor expressly waive his claim to the funds of his debtor held by the Alien Property Custodian; it would bring about the rather amazing result that the German debtor against whose funds suit has been brought directly by the creditor under section 9 may get away with paying less than 1 cent per mark out of these funds, while the debtor against whom no direct suit has been brought at all and whose creditor has expressly

waived his claim under section 9 would have to pay out of the funds belonging to him for an award rendered not against him but against the German Government at the rate of 16 cents per mark which rate according to the law of the United States as it stands now would in no way be applicable to him.

2. THE MORAL ASPECT

It has been said that the German debtors, in particular the German banks, display very poor business morals in not offering the assets being held by the United States in their name in payment of their pre-war debts. In justice to them it must be stated that most of the money and other property held by the Alien Property Custodian in trust for German banks does not belong to the banks at all but to their customers to whom the banks are indebted for the respective amounts in dollars. It can be safely assumed that the major part of those trusts will, in case of return, not go to the cestuique trust but to small investors all over Germany.

It must be stated furthermore that the popular idea still prevailing in many circles that the German banks made huge profits through the fall in the value of the mark is entirely without any foundation of fact. Even if the German banks had been able to invest all of their funds in foreign currency, the only result would have been that they would have avoided losing their funds. Such investments would merely have held their assets in the condition that they originally were, but would not have resulted in profits. In fact, however, it was quite out of the range of possibility for the banks to invest their funds abroad even though the banks were obliged to watch their mark assets dwindling in value day by day. The banks were not even able to avoid the losses by the depreciation, much less to make profits by it.

Monies are deposited with banks either at call or for a certain term. The banks must always be able to meet their liability for repayment. The investments must be realizable at the shortest possible notice.

Under ordinary circumstances the investments that fulfill this requirement best are first-class commercial bills of exchange, maturing not later than two months from date. The bills purchased must always be in terms of the same money as the corresponding liabilities of the banks. Should a bank have a liability in dollars but invest in French francs, for example, it would incur a foreign exchange speculation. The running of such risks is considered in Germany as against all principles of a sound banking policy. Such practices would cause banks to lose their standing entirely in the commercial world.

It is also considered unsound for a bank to invest in stocks or shares of a fluctuating value.

The only other investments for customer's moneys besides the short-term bills are short-term loans covered to a considerably higher amount by first-class collateral.

After the outbreak of war the German banks were not able to invest in the customary manner. Trade relations were completely disorganized and merchants no longer sold their goods against acceptances. Ordinary loans became less frequent. Only the most exceptionally sound institutions that applied for a loan could be considered a safe risk for the banks' customers' funds. Bills of lading and warrants were unknown in domestic commerce and exports had ceased. Bonds and shares had become undesirable as collateral for loans, for the stock exchanges were closed, and the securities could not be easily realized if the debtors defaulted in payment.

Practically the only investments that were left for the banks were bills issued by the German Treasury. They were payable within short terms, bore no interest and were sold as commercial bills of exchange at a discount.

The German banks bought these treasury bills because this investment was realizable at the shortest notice and because it was indeed the only form of investment considered sound and suitable for the banks to make.

This situation continued and was not essentially altered until after 1921. Though commercial relations revived after the armistice and to a further extent after the coming into force of the treaty of Versaillés, the situation regarding mark investments remained the same. With the depreciation of the mark the merchants either required cash payment or acceptances in foreign exchange. The banks on their side could not invest depositor's moneys paid to them on mark accounts in foreign exchange. The rate of exchange fluctuated in both directions and such investments were considered as highly speculative. It is simple enough from the present standpoint, after the knowledge of what

has happened, to look back and say that all money should have been invested abroad, but banking institutions which were supposed not to speculate with their customers' funds could not take the chances involved.

The German banks, as can be shown from their published balance sheets, not only invested until 1921 practically the total amount of their funds in treasury bills, but by doing so they fulfilled the requirements of a sound banking policy.

It is only necessary to study the financial reports of the principal German banks to ascertain the actual losses they have sustained as a result of the German Government's fiscal policy. Those losses have been experienced by practically every bank in Germany. The history of the recent inflation period in Germany is the best proof of the fact, that the success of any enterprise which has to do its business solely or principally in the currency of its own country, is interlocked with the fate of the currency itself. Moulton and McGuire in their book entitled "Germany's Capacity to Pay" summed up the entire matter when they said (p. 214): "The plain truth is that the business interests have grown poorer along with everybody else."

Mr. BISSELL. I thank the committee.

The CHAIRMAN. The committee thanks you, Mr. Bissell, for your statement.

Senator Owen, do you wish to speak for a few minutes?

STATEMENT OF HON. ROBERT L. OWEN, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. OWEN. Mr. Chairman and gentlemen of the committee, I merely want to make one observation with regard to the giving of priority to the American claimants over the Government in regard to the reparation fund coming from Germany.

I was a Member of the Senate when the declaration of war was made, and as a result of the declaration of war injuries followed to a number of American citizens who are now claimants and who have obtained judgment through the Mixed Claims Commission.

The question arose in the committee as to why they should have any priority over the Government of the United States. And I think it ought to be set forth very clearly in the hearings the reasons why that is justified and proper, apart from any mere sentimentality.

When a nation declares a war in the interest of all of the people of the nation, all of the taxpayers of the nation, and a citizen suffers the loss of his private fortune as a consequence of a policy declared in the public interest, it would seem to be almost axiomatic and a self-evident truth that the loss to the citizen should not fall disproportionately upon him, but that the loss, if any, incurred should be apportioned upon all of the people in whose interest the war was declared. So that if it should occur that for any reason these reparation payments should be discontinued, and the Government of the United States should ultimately suffer a loss, that loss would be better justified resting upon all of the taxpayers of America than it would be to fall disproportionately upon an individual citizen who was the victim of a public policy.

That is a primary proposition. I do not, of course, mean to imply that I think the reparation payments will not be made. I think they will be made. But even if they were not made, and if the reparations demanded by the Entente Allies from the German Republic should be entirely discontinued for any reason, then I think it worth while to remind the committee that the obligation of Germany to the United States does not depend upon the reparations declaration. That is an existing contract, and an existing

obligation, and will continue to be an existing obligation on the part of the German Republic to the American Government entirely regardless of the Dawes agreement or Dawes plan.

But there are some other observations that are to be made in this connection——

The CHAIRMAN (interposing). Senator, do you mean to say that if the reparations agreement was broken, and Germany did not pay the reparations as provided for under the agreement, that it still would be an obligation of Germany to the American Government?

Mr. OWEN. I do say so, under the Berlin treaty.

Senator REED of Pennsylvania. So that if we struck down the Dawes plan——

Mr. OWEN (interposing). If we struck down the Dawes plan, yes; it would still be an obligation.

Senator REED of Pennsylvania. It would remove an impediment.

Mr. OWEN. It would remove an impediment. I do not anticipate any such contingency, but it is a worth-while comment to make.

But there is another observation that is worth while to make. I do not represent any American claimants, but I do wish to see justice done them. When the United States, at the close of the war, refused to participate in the Reparation Commission, which became a committee of receivers of the assets of Germany, the United States took a step on that occasion which was felt to be justified by the Government for their public purposes, and declined to accept representation on the Reparation Commission and apparently left the impression it did not seek or wish reparations.

On the 18th day of December, 1923, I submitted to the Senate of the United States at that time a very complete and full statement of the amount of property which was turned over by Germany under the Versailles treaty to the Reparation Commission. There was a controversy between the German authorities and the authorities of the Reparation Commission. The Reparation Commission and the Entente Allies practically agreed that there was something over $4,000,000,000 which had been turned over. The Germans, on the other hand, insisted that $11,000,000,000 had been turned over. The details of that will be found in the Congressional Record, if the committee wish to examine it, of December 18, 1923, as an exhibit to my remarks at that time.

But the point I wish to make is that there was $4,000,000,000 turned over, and that was turned over not only for the purpose of meeting German obligations to the Entente Allies, but its obligations to the United States.

And the United States did not see fit to insist on any of that money coming to it.

The CHAIRMAN. France received the greater part of it.

Mr. OWEN. Yes; France received the greater part of it.

Senator REED of Pennsylvania. Did that include the articles turned over in the armistice agreement?

Mr. OWEN. Yes; it did. Thereafter, when the United States, charged with the duty of representing American citizens—because they can not represent themselves in these international affairs—the United States assumed that responsibility, and when it assumed that responsibility, it was charged with performing that responsibility with competency. It did not demand or receive—it did not even

demand any of that money. It did make a reservation that they reserved the right to claim credit. But they made no demand and received nothing from that vast amount of money so turned over. And thereafter, the United States having the responsibility of looking after its own citizens, and having assumed to perform it as the representative of the American Claimants. The United States Government should assume the loss, if any, flowing from its own neglect.

The CHAIRMAN (interposing). Senator, you said that vast amount of money. It was a vast amount of property.

Mr. OWEN. It was money too. They got money also.

The CHAIRMAN. Property was the greater part of it.

Mr. OWEN. It was liquidated and distributed as money, in large part.

Now afterwards, at the Paris convention, the United States, again representing itself and the United States citizens, gave itself preferential treatment at the time when it was acting for its own citizens and itself as claimant in cases decided by the Mixed Claims Commission as well as preferential treatment as to the Army occupation costs of $250,000,000. If it had not done that, the American citizens could have been paid in full. Under the 100,000,000 gold marks payable under the Dawes plan by Germany, it is most reasonable to provide that the American reparation claims should be given preferential treatment. First, because of the responsibility of the Government to its citizens for the three sound reasons already stated. But, in addition to that, because the life of the individual is a short, temporary life. He dies. If he does not receive the money while he is alive, he might as well not receive it at all. The Government of the United States goes on forever and does not suffer in the same way that an individual would. That is a moral reason, at least, for giving the citizen preferential treatment.

Senator REED of Pennsylvania. We have a vivid realization of that in the French spoliation claims.

Mr. OWEN. Yes; and we see that the United States has pursued this policy too; when, in the war, the United States was required to use the full power of the United States to obtain the money to carry on the war, it absorbed all of the credit of this country. Senators will remember that the United States sequestered $200,000,000 of that money so raised, for the purpose of furnishing the Federal farm loan banks the money to carry on their business. I, myself, had charge of that and put it through the Senate. I remember it very well. Here was a merited preferential treatment to correct a previous harm.

And now we are also paying, through the Veterans' Bureau and in hospitalization, and so forth, the amount of about $500,000,000 annually because of the injuries that were inflicted on our soldiers during the war. Here is a merited preferential treatment to correct another harm done.

I call attention to these things, because I think the record should show a justification for this committee to follow the precedents thus set. I would like to see the bill passed, and justice done all of these claimants.

I thank the committee.

The CHAIRMAN. We thank you, Senator, for your statement.

Mr. OWEN. I would be pleased to attach a statement which I made heretofore in greater detail which I think might advantageously go into the record.

The CHAIRMAN. At this time?

Mr. OWEN. Yes.

The CHAIRMAN. It will be incorporated as a part of your statement.

Mr. OWEN. All right, I thank you.

(The statement referred to is printed in full, as follows:)

A STATEMENT ON THE RETURN OF ALIEN PROPERTY AND SETTLEMENT OF AMERICAN CLAIMS AGAINST GERMANY

Gentlemen of the committee, in considering the return of German alien property and the settlement of American claims, your attention is respectfully invited, first, to the interests of the United States and the importance of its fixed policies with regard to the safety of private property.

OUR DOMESTIC INTERESTS

During the last century international law had developed a policy of giving complete protection to private property in the event of war, and practically all of the civilized nations respected this policy of protecting private property. The United States for a hundred and fifty years has maintained this policy firmly without a single departure. In 1802 it paid Great Britain approximately $3,000,000 to settle claims arising from confiscatory acts of individual States during the preceding war. The reason for this policy was as stated by Jefferson, Hamilton, and others responsible for the Constitution of the United States. That is, that when individuals confided themselves and their property to the hospitality and protection of our Government; when they loyally subjected themselves to our laws; when they paid taxes and created values by their industry and intelligence, there arose an implied contact between such individuals and the Government that they were entitled to protection, even if the foreign government of which they might be subject, should engage the United States in war.

Obviously, such individuals were innocent of making war, and the making of war by our Government could not be justly held to break the social compact, implied or actual, between them and our Government. Our Government, therefore, by the Constitution does pledge protection of their property against confiscation by numerous provisions. In consequence of this policy long pursued, the United States became a haven to which men might repair confiding in the safety of their private property invested in the United States. As an obvious result, hundreds of millions of dollars came to America and were invested in America, and the United States became of increasing industrial, commercial, and financial importance. Huge sums of money were borrowed from abroad and invested in the United States, by which our railroad system was built up and many industries were transplanted from abroad to the United States as a place both of profit and safety.

If we should now confiscate the German alien property and hold these individuals responsible for the alleged wrongdoing of the old German Imperial Government, or of the present democratic German Republic, we should be serving notice on all the world that the ancient and honorable standards set in the United States for the safety of private property could not longer be relied on.

Obviously, this would be a very serious reason to prevent in future the free flow of capital for investment in the United States from abroad, and would thus interfere with the greater future prosperity which America might otherwise attain. It would be against our present domestic financial interest.

Moreover, it would be against the honor and good repute of the United States abroad, because such an act, in violating our executive and legislative promises, would lower in the estimate of the world the good name of the United States Government, which has the opportunity now of setting a standard of high principle throughout the world. This is peculiarly the case because by the treaty of Versailles private property of aliens was in effect confiscated by Great Britain, by France, by Italy, by Belgium, These governments have injured their own standing, by this disregard and violation of the rights of private property, a fatal principle which led, perhaps, to the extreme disregard of private property

by the Communists and Bolshevik throughout Europe. It is to the national interest of America to stand strenuously against the Bolshevik doctrine, or any doctrine which disregards the rights of private property upon which civilization itself is based. For that reason the domestic policy of the United States should stand steadily for the safeguarding of private property and complete protection to the owners of the German alien property now held by the United States Government, as well as for the protection of the American claimants whose property has been put in jeopardy by war and who now seek the protection of their own government in the measures which your honorable committee is considering.

OUR FOREIGN INTERESTS

It is of equal importance to the United States in relation to our foreign affairs that we should treat private property as a sacred right.

The United States during the last 10 years has had an enormous development in its industrial, commercial, and financial life, and the present known outstanding investments of the United States and its nationals abroad exceed $20,000,000,000.

If we treat the right of private property lightly or inconsiderately, we thereby set a false precedent which may be infinitely injurious to the United States. If we confiscate private property invested in the United States in disregard of our own Constitution and legislative pledges, we should not be surprised if other nations should avail themselves of such an evil precedent to confiscate the private property of our citizens and bring on international complications of dangerous consequences. The great friction which has taken place between our Government and other governments where American property has been put in jeopardy on a serious scale will readily occur to your honorable committee. The German alien property, amounting possibly with its reductions to $200,000,000, is only one-hundredth part of the American investments abroad.

Our foreign economic interests, therefore, require that we should not put in jeopardy such interests by establishing a bad precedent. We should not be influenced by those nations who have in the stress and excitement at the ending of the great war violated this principle. It is clearly evident that their present financial embarrassment and difficulty of getting credits on a favorable basis are partly due to the sense of insecurity which has been brought about by this unwise policy. Their grave blunder in disregarding their own previous better policies is a warning to us and not an example.

Therefore, in considering the question of the German alien property and the settlement of American claims, our own national, domestic, and economic interest should be well considered as of the greatest importance in guiding our action in regard to such settlements.

America has now the opportunity to maintain and set precedents of far-reaching consequences to the great future of the United States and to the world itself. We feel justified; therefore, in submitting to your honorable committee the further consideration which justifies your committee in recommending to Congress the complete settlement of these questions.

THE HONOR AND DIGNITY OF THE UNITED STATES

Separate and apart from all economic considerations is the honor and dignity of the United States. The devotion of the American people to their Government is due to the fact that they entertain a profound respect and love for the Government of the United States, because they know that that Government is incapable of conscious wrong; that they are justified in entertaining the deepest sentiment of honor and repect for that Government; that the Government fulfills every just obligation; that its dignity and its honor are kept immaculate by the Representatives of the American people. And nothing could make amends to have this faith of the people weakened in any degree by an act of Congress or by an omission to act by Congress, which would show that the Congress of the United States was in any way indifferent to the legislative and executive pledges and commitments of this Government. So that our honor and our dignity alike require the most scrupulous consideration in disposing of this important question.

We, therefore, feel every confidence in submitting the following observations with regard to the questions before your committee:

First. The question of the return of the German alien property.

GERMAN ALIEN PROPERTY RETURN

We submit that the German alien property owners should have relief at the present session of Congress.

For nine years they have been deprived of their property. Even if Congress acts now it will take from one to two more years to make the settlements. Their need has been, and is known to be, serious.

It is conceded that as private individuals, trusting their large investments entirely to the protection and the justice of the United States, they were not responsible for the World War which was ruinous to them.

TREATY PROVISIONS

They came under the mutual protection of the Government of the United States and of the former Imperial Government of Germany; under the special treaty provisions of the United States and Prussia of 1799, article 23, as renewed by article 12 of the treaty of 1828, and of the principles declared by the United States in the Jay treaty of 1794, article 10.

The treaty between the United States and Prussia of 1799 provided as follows:

"ART. 23. If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs; and may depart freely, carrying off all their effects without molestation or hindrence; and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

"And it is declared that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations."

This article was renewed by article 12 of the treaty of 1828, in force when the property was taken over. (See vol. 2, Malloy Treaties and Conventions, p. 1494.)

Article 10 of the Jay treaty of 1794 provided:

"Neither the debts due from individuals of one nation to individuals or the other, nor shares, nor moneys, which they have in the public funds, or in the public or private banks, shall ever in any event of war or national differences be sequestrated or confiscated, it being unjust and impolitic that debts and engagements contracted and made by individuals, having confidence in each other and in their respective governments, should ever be destroyed or impaired by national authority on account of national differences and discontents."

The United States Government in pursuance of this just policy under the treaty of January 8, 1802, paid Great Britain some $3,000,000 to make good acts of confiscation against British subjects practiced by some of the States in the Revolutionary War.

UNITED STATES CONSTITUTION

They came under the special protection of the Constitution of the United States, which having taken every precaution to secure the protection of private property, declares as a fundamental principle:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures."

It expressly declares that this right "shall not be violated."

It declares that private property shall not be taken for public use without just compensation. It makes no provision for taking private property for private use, even with compensation.

Amendment 5 especially declares:

"No person shall be deprived of life, liberty, or property without due process of law."

The word person, as used in this amendment, is not confined to a citizen, but covers any person of foreign allegiance domiciled in America, or doing business in America.

The Constitution provides adequate means of protecting property rights against private, as well as public, trespass.

The Constitution makes the principle of holding private property inviolably binding on the 48 States, and says:

"Nor shall any State deprive any person of life, liberty, or property without due process of law."

The Constitution forbids any State to pass any bill of attainder or law impairing the obligation of a contract.

These constitutional provisions were based on the principles enunciated by Thomas Jefferson, Alexander Hamilton, Benjamin Franklin, George Washington, and were based upon fundamental justice, sound morals, and wise international policy.

The authors of the Constitution held that when the Government admits foreigners, or invites them to bring property into the country, to pay taxes, to obey and uphold the law, the Government thereby tacitly pledges protection and security to such tax-paying foreigners. That such aliens subject to the civil and criminal law in war as well as in peace, by their loyal obedience to the law, are entitled to protection. That the seizure of their property, therefore, and its confiscation, would not only violate the implied contract of hospitable residence, but would violate every rule of justice and equity.

In his Camillus Letter 18, Alexander Hamilton said:

"No power of language at my command can express the abhorrence I feel at the idea of violating the property of individuals, which, in an authorized intercourse in time of peace, has been confided to the faith of our government and laws, on account of controversy between nation and nation. In my view, every moral and every political sense unite to consign it to execration."

Alexander Hamilton, in 1794, discussing the treaty between the United States ad Great Britain, urging the doctrine of the protection of private property, said:

"Moreover, the property of the foreigner within our country may be regarded as having paid a valuable consideration for its protection and exemption from forfeiture; that which is brought in, commonly enriches the revenue by a duty of entry. All that is within our territory, whether acquired there or brought there, is liable to contributions to the Treasury, in common with other similar property. Does there not result an obligation to protect that which contributes to the expense of its protection? Will justice sanction, upon the breaking out of a war, the confiscation of a property which, during peace, serves to augment the resources and nourish the prosperity of a State? * * * Reason, left to its own rights, would answer all these questions in one way, and severely condemn the molestation, on account of a national contest, as well of the property as of the person of a foreigner found in our country, under the license and guaranty of the laws of previous amity."

It was under this policy that the United States paid Great Britain some $3,000,000 to make good certain acts of confiscation against British subjects practiced by some of the States in the Revolutionary War.

The United States Supreme Court has held, through John Marshall, Chief Justice (U. S. *v.* Percheman, 7 Peters 51) that while in waging war the United States has, as one of its war powers, the right to confiscate, still—

"The modern usage of nations, which has become a law, would be violated; that the sense of justice and of right, which is acknowledged and felt by the whole civilized world, would be outraged, if private property should be generally confiscated and private rights annulled."

The United States never has, even in war, in a hundred and fifty years confiscated alien private property.

CONFISCATION WOULD VIOLATE EXECUTIVE PLEDGES

When this country was threatened with the renewal of the submarine warfare, and war was contemplated, and the probable consequences, and alien property owners began to withdraw deposits from America, the President of the United States on February 18, 1917, through the Department of State, made the following official declaration:

"The Government of the United States will under no circumstances take advantage of a state of war to take possession of property to which, under inter-

national understanding and recognized law of the alien, gives it no just claim or title. It will scrupulously respect all private rights alike of its own citizens and subjects of foreign states."

The President of the United States said on April 2, 1917:

"We have no quarrel with the German people. We have no feeling toward them but one of sympathy and friendship * * *. We are but one of the champions of the rights of mankind. We shall be satisfied when these rights have been made as secure as the faith and freedom of the United States can make them."

The President, on April 6, 1917, pledged the protection of all enemy aliens and said they would be "accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States."

The President, replying to Pope Benedict, said, referring to the Germans in Europe, that the American people "desire no reprisal upon the German people, who have themselves suffered all things in this war which they did not choose."

In his message to Congress December 4, 1917, he said:

"No nation or people shall be robbed or punished because the irresponsible rulers of a single country have themselves done * * * wrong."

The President said, on April 6, 1918:

"We, ourselves, propose no injustice, no aggressions. We are ready whenever the final reckoning is made to be just with the German people."

CONFISCATION WOULD VIOLATE LEGISLATIVE PLEDGES—TRADING WITH THE ENEMY ACT

The trading with the enemy act, approved October 6, 1917, shows on its face, by its context, by the manner of its presentation to Congress, by the testimony before the committees, by the reports of the committees of Congress, by the debates in Congress, that it had no intention whatever to confiscate alien property or to dishonor the pledges made by the President of the United States and by the Secretary of State immediately preceding the presentation of this bill to Congress.

The act was intended as a war measure to control trade and communication between citizens of the United States and citizens of Germany to prevent alien property being used to the disadvantage of the United States during the war, to give complete security to alien property, and to safely return it after the war or to make a just settlement, as promised by the President.

This act was drawn under the direction of the President of the United States and passed at the request of his administration for the above purpose. It was elaborately explained to Congress by Hon. Robert Lansing, Secretary of State, Hon. William C. Redfield, Secretary of Commerce, Hon. Charles Warren, Assistant Attorney General, Dr. Edward E. Prenty, Chief of the Bureau of Foreign and Domestic Commerce, under whose direction the act was drawn, before the committee May 29, 1917, page 13, that the bill was intended for the protection of alien property. Secretary Redfield, speaking for Mr. Lansing, in his presence, said:

"The creation of an Alien Property Custodian is a novelty and is in line with that same effort toward equity which impels us to indicate an earnest desire to show to the people with whom unfortunately we are engaged in war that here is the opposite of confiscation and here is the opposition of requisition."

Mr. Lansing said that the act "will put it in the hands of the Government to protect the property and it will avoid any lawless acts against it."

Mr. Warren said: "It is merely a temporary taking over of an enemy property; its conservation is in the hands of the Alien Property Custodian."

Both the Senate committee report and the House committee report (H. R. Rept. 685, 65th Cong., and S. Rept. 113, 65th Cong.) expressly declare the same principles and that the act did not contemplate confiscation.

The debates in Congress demonstrated the same purpose exclusively.

Mr. Montague said the act of taking over the property was done "to conserve the interest of America in this great struggle, and at the same time its final and honest payment to the creditors is made more secure."

Mr. DeWalt said: "This property is not confiscated at all." He also said that the bill was not in violation of The Hague Convention of 1907, which expressly provides for the protection of private property on land, and said: "It was in conformity with that idea that the proclamation of the President as early as last June was made, reaffirming the doctrine that private property should not be confiscated and that the provisions of this bill were made as they are."

Upon the suggestion of Mr. Stafford that Congress might, after the war, neglect to act, what it would have the effect of confiscation, Mr. Snook said: "Does the gentleman think that Congress will assume that position? Has the gentleman so little confidence in the Congress of the United States as to think it will not act fairly and justly with those men?"

COURT DECISIONS

The courts decided against confiscation in Pennsylvania Supreme Court (266 Pa. St. 189) and said: "The trading with the enemy act is not for confiscation of property; it is rather for its preservation. While, if the President so directs, the money or property of alien enemy may be taken by the Government for its own purposes, the owner does not part absolutely with it if, after the end of the war, his claim to it shall be settled as Congress shall direct." This decision was confirmed by the United States Supreme Court.

In the forty-sixth New York Supreme Court Reports, page 175, the court says: "In the exercise of its plenary power in this matter, Congress might have provided for the confiscation of enemy property, but it did not do so. The act on its face is plainly not confiscatory."

The decision of the Supreme Court in the case of the United States *v.* Chemical Foundation does not negative this sound doctrine. The issue of the Chemical Foundation case was whether title passes to the Chemical Foundation by sale of the patents by the Alien Property Custodian to that corporation. The court held that, as a matter of law, that the sale during the war of said property was valid, but this does not mean confiscation even in time of war, because the promise of the President of the United States and of the Congress of the United States to make just settlement after the war sufficiently cover the case and left an open forum for the settlement of any claim for damage arising. No individual instance had occurred under which the Alien Property Custodian should have disregarded the rights of an alien property owner that would change the purpose of the executive and legislative branches of the Government to which we have referred above.

Hon. Charles Evans Hughes, Secretary of State, in an address at Philadelphia, November 23, 1923, said: "A confiscatory policy strikes not only at the interest of particular individuals but at the foundations of international intercourse, for it is only on the basis of security of property, validly possessed under the laws existing at the time of its acquisition, that the conduct of activities in helpful cooperation is possible, * * * rights acquired under its laws by citizens of another State, a State is under an international obligation appropriately to recognize, it is the policy of the United States to support these fundamental principles."

THE LANGUAGE OF THE ACT

The language of the act shows the act was intended as a war measure only to control trade and communication between citizens of the United States and citizens and residents of Germany, and to prevent alien property being used to the disadvantage of the United States during the war, to give security to alien property and safely return it after the war or settle damage done.

The Alien Property Custodian, section 6, was empowered to receive all money and property belonging to a nonresident enemy.

German citizens in the United States holding property were not molested in person or property unless, as in a few negligible cases, by presidential proclamation they were declared enemies.

The Alien Property Custodian was to receive the property, "to hold, administer, and account for the same under the general direction of the President, and as provided in this act." But the President was expressly pledged not to confiscate but to protect the property and faithfully account for it when the war is over.

The alien property owners residing in Germany left their properties in the United States under the pledge of a German-American treaty, under the constitutional protection of the United States, under the unbroken policy of 150 years, under the protection of The Hague Convention of 1907, and the international obligation of the United States, under the executive pledges of the Secretary of State and of the President of the United States, and were perfectly justified in doing so. To confiscate the property now or to continue to retain it with the effect of confiscation would clearly dishonor the pledges made by the Chief Executive of the United States, and the obligations of the Congress itself.

The Alien Property Custodian was "vested with all of the powers of a common law trustee in respect of all proprety other than money," and "under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof," necessary to prevent waste. "To protect such property to the end that the interests of the United States in such property and rights of such person as may ultimately become entitled thereto or to the proceeds thereof, may be preserved and safeguarded." This language is entirely inconsistent with the confiscation of the property.

Section 12 declares: "After the end of the war any claim of any enemy or of an ally of an enemy to any money or other property received and held by the Alien Property Custodian, or deposited in the United States Treasury, shall be settled as Congress shall direct." This language was discussed in Congress and its meaning explained to be that an honest accounting should be made to the owner and the return of the property or its value after the war was ended.

Section 16 imposed a penalty for willful violation of the provisions of the act that "any property, funds, security papers or other articles or documents or any vessel," etc., "concerned in such violation shall be forfeited to the United States."

This language is entirely inconsistent with the idea that the property was intended to be confiscated by the United States except for a willful villation of the act itself. At a later date, March 28, 1918, the President of the United States was authorized to acquire the title of the docks, piers, warehouses, wharves, and terminal equipment facilities on the Hudson River, now owned by the North German Line Dock Co. and the Hamburg-American Line Terminal & Navigation Co., two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: "*Provided*, That if such property can not be procured by purchase, then the President of the United States is authorized and empowered to take over for the United States the immediate possession and title thereof. If such property shall be taken over, as aforesaid, the United States shall make such compensation therefor to be determined by the President. Upon the taking over of said property by the President, as aforesaid, a title to all such property so taken over shall immediately vest in the United States."

But the President was fully committed by his own proclamation and by the policy of the Government not to confiscate, but to account for such property uprightly. A plan for such adjustment is now being considered by your honorable committee, upon the recommendation of the Secretary of the Treasury, representing the President of the United States. The language of this latter amendment shows there was no intent to confiscate.

On March 28, 1918, the act was further amended to give the custodian under the President the power to dispose of such properties by sale or otherwise "in like manner as though he were absolute owner thereof." This amendment was necessary to enable the custodian, as trustee, to convey a title free from doubt to protect the property itself. It often became necessary to dispose of assets which otherwise might be perishable, but there was no negation whatever of the duties of the trustee to continue to act faithfully as a trustee, nor was there any modification of the pledge by Congress, after the end of the war, to make a just settlement as promised by the President.

It was under this act, as amended, that the chemical patents relating to explosives, gases, medicines, etc., were sold to the Chemical Foundation before the end of the war. The Chemical Foundation was not organized for profit, but for public fiduciary purposes, to make available to the chemical industries of the United States the important patents necessary for war-making purposes and for purposes of defense. The Supreme Court held at the October term, 1926, that there was no conspiracy or fraud in such sale and that a good title passed regardless of the consideration paid. The reasoning is clear, and there is nothing inconsistent with the trading with the enemy act in this decision, for the very sound reason that the owners of the patents were provided a remedy in the law itself and because the executive and legislative branches of the Government were pledged to a just settlement when the war was over, and no injustice is done under these circumstances, only in the event that a fair and just settlement were refused could a complaint of injustice be made.

The Alien Property Custodian has advised the return of the property.

THE CAUSES OF THE DELAY IN RETURNING GERMAN ALIEN PROPERTY

The treaty of Versailles, officially terminating the war, went into effect January 10, 1920. It was submitted to the Senate of the United States and subjected to a prolonged discussion which finally terminated at the close of the Wilson administration in a refusal to accept it.

The new administration of the Sixty-seventh Congress came into power March 4, 1921. On July 2, 1921, the Knox-Porter resolution was passed declaring the war at an end and declaring that the United States and its nationals were entitled to all rights accruing, under the terms of the armistice signed November 11, 1918, or under the treaty of Versailles, or as to one of the principal allied and associated powers.

It further provided (sec. 5): "All property of the Imperial German Government or its successor or successors, and of German nationals which was on April 6, 1917, in, or has since that date come into, the possession or under control of, or has been the subject of a demand by the United States of America, or of any of its officers, agents, or employees from any source, or by any agency whatever * * * shall be retained by the United States of America, and no disposition thereof made except as shall have been heretofore, or specifically hereafter shall be provided by law, until such time as the Imperial German Government * * * or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Government of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered through the acts of the Imperial German Government or its agents * * * since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German * * * American or other corporations, or in consequence of hostilities or of any operations of war or otherwise," etc.

The Knox-Porter resolution also demanded the "most favored nation" treatment; and confirmation to the United States by Germany of "all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals" * * * "and shall have waived any and all pecuniary claims against the United States of America."

Retaining the German alien property except and until provided by law was already the United States statute law under the trading with the enemy act and Germany being required to agree to it was merely a method of requiring Germany to agree to existing law until Germany made "suitable provision" which Germany was anxious to do.

The obvious intention of the Knox-Porter resolution was not to confiscate German property but to retain it until the German Government had complied with the demands made.

The German Government did comply to the extreme limit of its capacity by the treaty of Berlin. (Hearings, Part III, pp. 17–24.)

THE BERLIN TREATY

On the 25th of August, 1921, the plenipotentiaries of the German Commonwealth and of the United States entered into a treaty of peace, reciting the armistice, the treaty of Versailles of June 28, 1919, and the Knox-Porter resolution of July 2, 1921, as follows:

"Being desirous of restoring the friendly relations existing between the two nations prior to the outbreak of war—

"ARTICLE I. Germany undertakes to accord to the United States and the United States shall have and enjoy all the rights, privileges, indemnities, reparations, or advantages specified in the aforesaid joint resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the treaty of Versailles, which the United States shall fully enjoy, notwithstanding the fact that such treaty has not been ratified by the United States."

At the time of the Berlin treaty, August 25, 1921, the German Government was under the military, financial, and commercial control of the allied and associated powers. The treaty of Versailles had been enforced by a famine blockade, and the threat of an immediate resumption of war if the Government of the German Commonwealth refused to submit to the treaty of Versailles, as dictated.

The President of the United States in October, 1918, had demanded the abdication of the German Imperial Government, William II and his dynasty, against which the Government of the United States had waged war. William II and the Hohenzollern dynasty abdicated prior to the armistice of November 11, and on November 9, 1918, a revolution took place in Germany to establish such a government as that demanded by the President of the United States, and desired by an overwhelming majority of the German people.

Frederick Ebert, leader of the German social democracy, on November 10, assumed the chairmanship of the council of people's commissioners. The hereditary rulers and other German kings, princes, and notables, followed the action of William II. They all stipulated abdication or acquiesced in their deposition. The military masters of Germany were overthrown. The United States had accomplished its declared purpose in waging the war.

On November 30 regulations for an election were framed to elect representatives to a constitutional convention. These regulations established the principles of universal, direct, secret, and equal suffrage for all German men and women of 20 years of age or more on the date of the election. Proportional representation was established. The election was held January 19, 1919, and a provisional government was established February 10, 1919. The convention was composed of 423 delegates from 38 districts, elected by proportional representation.

Social Democrats	163
The Center (Catholic)	90
German Democratic (progressive)	75
German National People's Party (conservative)	42
German People's Party	22
Independent Social Democrats (radical)	22

The monarchist element was thus demonstrated by proportional selection to have been practically eliminated by this vote of the German people. The constitution of the German Commonwealth was adopted on July 31, 1919, and became effective by executive order August 11, 1919. A new cabinet had been organized by Gustavus Bauer. (See Constitution of the German Commonwealth, by Monroe and Holcomb, Harvard University, published by the World Peace Foundation, 40 Mount Vernon Street, Boston.)

Under this treaty seeking to "restore friendly relations" with the German people, shall we confiscate any part of the private property of the citizens of Germany and now, in time of peace, violate our Executive and legislative pledges to them on the theory it will profit us in money to do so?

THE GERMAN LAW OF EXPROPRIATION

The term "Reich" now means "Commonwealth" or "Republic," representing a national union of States.

Section 1, Article I, declares as follows: "The German Commonwealth is a republic. Political authority is derived from the people."

Article 7 provides, among other things, for jurisdiction in conjunction with the States of—

"12. The law of expropriation." (Confiscation is not recognized.)

Article 153 recites: "The right of private property is guaranteed by the constitution. Its nature and limits are defined by law. Expropriation may be proceeded with only for the benefit of the community and by due process of law. There shall be just compensation in so far as is not otherwise provided by national law. If there is a dispute over the amount of the compensation, there shall be a right of appeal to the ordinary courts in so far as not otherwise provided by national law."

Articel 178 declares as follows:

"The constitution of the German Empire of April 16, 1871, and the law of February 10, 1919, relating to the provision of government of the commonwealth are repealed.

"The other laws and regulations of the empire remain in force in so far as they do not conflict with this constitution. The provisions of the treaty of peace, signed on June 28, 1919, at Versailles, are not affected by the constitution."

The other laws and regulations of the empire remaining in force provide that the exappropriation of private property is a matter of State law under which a private property owner may have his property appropriated for public purposes upon such compensation, with a right of hearing in the State court. In this manner the rights of private property of a German citizen is protected under the German State law. The German Government in agreeing to the Berlin treaty that the German Government accord to the United States the right to retain all provate property of German citizens in the United States until suitable provision was made by the German Government for the satisfaction of all claims against that Government would have had no option even if confiscation of vested private property had been contemplated. But that Government had no reason

to believe, it is respectfully submitted, that when the German Government did everything in its power to make suitable provision, that then the United States would resort to confiscation of the private property of the German nationals under American protection if the American claims were not fully and immediately liquidated on a cash basis.

The German Government therefore had no constitutional right to authorize the confiscation of the property of German nationals under the Weimar constitution.

It is perfectly obvious that the German Government had no intention of authorizing the confiscation. It merely surrendered to the requirement of the Government of the United States and accorded to the United States the right, which Congress had already taken, to retain the property of German nationals until the German Government made suitable provision for the satisfaction of the demands of American claimants.

But even if the German Republic had had the right to confiscate, and if the treaty of Versailles had authorized confiscation, even if the German Government had intended to authorize confiscation, the German Republic is not competent to modify the Constitution of the United States, nor to modify the social compact of the United States with private persons holding property in the United States, nor to modify nor interfere with the contract relation arising from the Executive and legislative pledges of the United States to protect the private property of individuals who are under the safeguard of our laws.

The United States has persistently refused to recognize the existing government of Russia for many years, on the ground that the Russian Government had systematically violated the sacred principle of the rights of private property, and was undertaking to spread this pernicious doctrine elsewhere. The United States can not afford, itself, to violate this principle.

Hon. A. W. Mellon, Secretary of the Treasury, in his public letter of April 19, 1926, in discussing the question of Germany's action in attempting to make suitable provision for the satisfaction of American claims, as provided under the Knox-Porter resolution and the Berlin treaty, said:

"A creditors' committee investigated Germany's economic capacity and found that 2,500,000,000 gold marks ($625,000,000) per annum was Germany's entire capacity to meet her treaty obligations. * * * German creditors accepted their committee's recommendation as embodied in the Dawes plan, and by the Paris agreement divided the total annuity among the creditors. The United States signed the Paris agreement, and thereby accepted the Dawes plan. By the Paris agreement the annuity for the payment of the American mixed claims was fixed at 45,000,000 gold marks ($11,000,000)."

The German Republic therefore has made suitable provision for the satisfaction of the American claims, unless it is held that where Germany has paid to the utmost of her capacity, such provision is still not "suitable." Such an interpretation of the Berlin treaty is unreasonable. The purpose of the Knox-Porter resolution was to put pressure to bear on Germany and compel Germany to do her utmost to pay these claims. Germany has done her utmost and her utmost has been fixed by the entente allies and accepted by the United States. If this be not "suitable provision," the term is a mockery.

CONGRESSIONAL ACTION UNDER THE TRADING WITH THE ENEMY ACT

The Congress of the United States under the trading with the enemy act has released all of the property held by many of the persons whose property was held by the Alien Property Custodian, even where such persons have had their property taken over lawfully under said act by the Alien Property Custodian. The property of all persons, German alien property owners, who by the operation of the Versailles treaty had become citizens of other newly erected nations or had become citizens of other governments under the treaty of Versailles, such as the German citizens who now are residents of Schleswig-Holstein, or of Alsace and Lorraine, or who became citizens of Belgium when Eupen and Malmedy were attached to Belgium; or of German citizens who became citizens of Czechoslovakia, or became citizens of Poland, as in Dantzig and the Dantzig Corridor, and in other portions of eastern Germany attached to Poland; or who now are citizens of Jugoslavia; showing that Congress had no intention to confiscate this property, and had actually released all of the holdings belonging to thousands of former German citizens who came within certain categories.

Moreover, the House of Representatives passed the Winslow bill on February 23, 1923, by a vote of 300 to 11, directing the return of all German alien property

to German owners up to an amount of $10,000, showing that with regard to such persons Congress did not intend to confiscate their property but ordered it returned.

It is incredible that Congress intended to confiscate the property remaining after such action of Congress in ordering the full return to innumerable individuals as above set forth. The reason for retaining any portion of the property was obviously in the interest and for the benefit of the American claimants whose advocates naturally desired to have these claims settled before the claims of all the German nationals had been finally disposed of. It was in deference to their wishes that a portion of the property was still retained and, due to a parliamentary compromise, which enabled a partial settlement to be made at that time with the smaller owners.

THE AMERICAN CLAIMS AGAINST THE GERMAN REPUBLIC

The question arises—what course should Congress take in regard to the American claims against the German Republic.

During the last session of Congress the Secretary of the Treasury, Hon. A. W. Mellon, with the approval of the President of the United States (hearings), proposed that the United States should finance the American claims and be reimbursed such advances by Germany out of 100,000,000 gold marks payable annually, using $30,000,000 of accumulated interest which had been obtained on German alien property funds, but not allocated. The use of this interest was agreed to by the representatives of the German owners of the alien property, so that by this settlement the American claimants would not be compelled to wait for a period so long as to be destructive of their rights, and so that the return of the German alien property might be immediately made without the objection of those who feel that the German alien property should be retained until the American claims were liquidated.

The objection was made that to use the credits of the Treasury of the United States to liquidate the American claims would be unjust to the Treasury because in the event that the German Government should default in making the payments pledged by the German Government to the United States it would inflict a possible loss on the Treasury which would be against the interest of the taxpayers of the United States.

The matter was somewhat strongly put by saying it was equivalent to Treasury money paying German debts. These objections deserve a careful consideration.

The amount of the indebtedness of the German Republic to the United States on account of the army of occupation costs is $250,000,000, without interest. The amount which would be due to the American claimants and the United States, less the amounts available, would be approximately $200,000,000, making a total of $450,000,000, less credits and cross-entries of $100,000,000 or more, to be liquidated by the payment of $23,820,000 (100,000,000 gold marks) per annum.

The Treasury can obtain this money due to liquidate the American claims for approximately 3¼ per cent. The United States is committed not to charge interest on the Army occupation cost, so that the liquidation under the plan of paying the United States 100,000,000 gold marks per annum would liquidate the fund within a reasonable time, unless Germany defaulted.

There is no probability of Germany defaulting this debt, which is peculiarly a debt of honor which the German Government fully recognizes, and Germany is otherwise obligated to pay these debts even if the Dawes Plan were modified. The debt due to the United States by Germany under such an arrangement would amount to a little over 30 cents per capita per annum of the German population for the annual payment of $23,800,000 per annum. Germany is one of the most thoroughly organized industrial communities in the world.

But the objection still lies against the use of the treasury fund for payment of American claims—if Germany should default—and it is therefore necessary to inquire further whether or not the financing of the American claims by the treasury is or is not justified, in view of a possible risk.

Primarily the obligation to pay the American claims rests upon Germany, the German Republic, and is freely acknowledged. But in the contingency of German default we have a right to inquire whether the United States is not obligated as a matter of law, as a matter of sound policy, as a matter of good conscience, to protect the American claims in such event.

THE UNITED STATES IS OBLIGATED TO PROTECT THE AMERICAN CLAIMS

In times of peace a citizen who pays his taxes and supports the law is entitled to the protection in his life and property by his government, and the United States is charged with the duty of meeting the expense of protecting the life and property of the citizen through the processes provided, and private property can not be taken without just compensation. If he is assaulted the Government of the United States goes to the expense of prosecuting those who are guilty of the assault.

But in times of war the citizen must do more than pay his taxes—he must offer his life itself for the protection of his Government. He must pay extraordinary taxes; he must be prepared to subordinate every private interest for the public safety, and a reciprocal obligation arises in times of war with the Government. The Government should protect the citizen to the extent of its power against any injury by the operation of the Government itself.

The Government in time of war declares war for the purpose of protecting the larger interests of all of the people, and if in protecting all of the people by war a citizen is subjected to an extraordinary loss due to this act of the Government in declaring war, or due to the policies laid down by the Government during the war, the losses should not be allowed to fall disproportionately upon the citizens, but should be apportioned upon all of the people in whose interest war or the policies of war were declared.

An American citizen who suffered a great loss in Germany as a result of the declaration of war, or on the sea because of war policies adopted by the Government, is entitled to look to his Government for redress if the German Government, which is primarily responsible, should default in the liquidation of such claim.

The American claimants have a primary claim against Germany but a secondary claim against the United States. If Germany defaults, it is the duty of the American Government to protect its citizens, nevertheless.

This is the exact principle recognized by France in rebuilding the devastated regions—France paid the cost of repairing and rebuilding the destroyed property and looks to Germany to repay; why should the United States be less considerate of its citizens or less just and fair to its own people who have suffered?

The American citizens having property in Germany are under the mutual protection of the German Government and of the American Government by international treaty between Germany and the United States, and also under The Hague Convention, which pledges the citizen safety of private property in war, and if Germany defaults in this obligation, the citizens who relied upon the mutual obligations of Germany and the United States to safeguard their property have a right to look to the United States Government for payment.

THE UNITED STATES AS TRUSTEE

The United States was chargeable with the duty as the representative and trustee of its citizens to see to it that its citizens were protected in their private property rights as against the German Imperial Government and its successor, the German Republic. A private citizen can not safeguard himself against a foreign government; he must rely upon his own government to protect him, and the responsibility of his own government to protect him is perfectly manifest. The United States recognizes this obligation in passing the Knox-Porter resolution and the Berlin treaty, and in the international agreement, establishing the Mixed Arbitral Commission, and in its negotiations obtaining 45,000,000 gold marks with which to liquidate the obligations of the German Republic to the American claimants.

But the United States is not only responsible for the discharge of this duty, but for the discharge of the duty in a competent manner. The United States Government may not by negligence imperil its own citizen's rights without responsibility.

It is a notorious fact that when Germany had quick assets available to pay the Army occupation costs, and the American claimants in 1918, 1919, 1920, etc., the United States, by its negligence, failed to collect the amount even of the Army occupation costs from the Reparation Commission established by the allied and associated powers. Was not this a grave negligence of the Government of the United States of which the American claimants would be the victims unless now the American Government assumes the responsibility of the loss, if any, from a future possible German default?

The United States, when Germany had quick assets, made no demand on Germany for payments to protect the American claimants, which was its bounden duty to do. Since, therefore, the United States by its negligence has put the American claimants in danger of the possibility of loss in the event that the German Republic might default, the United States, chargeable with the duty of protecting its own citizens against its own negligence in this matter, should take the risk, if any there be, of German default.

THE PARIS AGREEMENT

The United States having by its negligence failed to secure the assets necessary to meet the army occupation costs, and the amounts due the American claimants, went to Paris, January 24, 1925, when the Dawes plan was adopted, six years after the armistice, and demanded a participation at that belated date, and obtained from the allied powers the agreement that the United States should have 55,000,000 gold marks as first lien for the protection of the Army occupation costs, and second, 45,000,000 marks out of the Dawes reparation fund, after certain primary charges had been made, including the 55,000,000 gold marks. In other words, the United States, acting as representative of the American claimants, obtained a first lien for itself, and a second lien for the benefit of the cestui que trust—the American claimants.

It should be clear that the United States, as trustee, according to the principles, practices, and underlying reasons of the law of equity, should not take advantage of the American claimants in this manner by giving itself preferential treatment. Moreover, the United States obtained the 100,000,000 gold marks on the ground, as stated by its representative in Paris, that the United States had no other means available for meeting these charges. It was perfectly clear that under the Constitution of the United States, the executive and legislative pledges of the United States, that the German alien property could not be confiscated and used as a means of meeting the Army occupation costs or pay the American claimants. Having on this ground obtained the 100,000,000 gold marks under the Dawes plan, the United States in effect confessed that the American claimants had no security in the alien property in the hands of the United States. This implied confession that the alien property was not a security leaves the Government all the more responsible.

If the Government attempted to confiscate the German alien property it would lose the right to retain the 100,000,000 gold marks per annum, which it got allowed at Paris on the representation that the alien property was not available.

For this reason, since the United States can not plead the right to confiscate the German alien property as a means of meeting the American claims, the United States, as a matter of common fairness, should recognize its duty to give the American claimants the position of preferred creditors against the 100,000,000 gold marks, finance them, and take the possible risk, if any, of having Germany default.

This policy is a wise policy from a national standpoint, because it is of grave importance that the citizens of the United States should be able to rely upon their Government to protect them in the event of war against the consequences of governmental acts or governmental policies. The strength of the Government of the United States is based upon the devotion of its citizens, and the attachment of the citizens to the Government must depend upon the Government giving full protection to the citizen in his just rights.

For these reasons the United States should, as a matter of right, as a matter of good conscience, as a matter of sound policy, take the risk, if any, of Germany defaulting. The actions of the Government of the United States in protecting its citizens against the contingencies of war are shown by many instances during the war where the Government organized special instrumentalities for the protection of the citizen against the extraordinary demands of war, such as the War Finance Board, where the Government used its credits on a huge scale to protect the citizens against the injuries which war otherwise would have inflicted; where the Government, for instance, used its own credit to the extent of $200,000,000 to finance loans through the farm loan banks to the farmers of the Nation. The Government is now spending $500,000,000 per annum for the protection and restoration of citizens injured by war (through the Veterans' Bureau). It set up machinery for personal insurance during the war for citizens who enlisted under the colors; it provided pensions for them. It set up marine insurance for the protection of its citizens when the American insurance companies were unable or unwilling to bear the risk of marine insurance.

It is of great importance that the policy laid down in the Berlin treaty of restoring friendly relations between the German people and the American people should be carried out by liquidating all of these unsettled claims of German nationals and of American nationals.

The settlement of these claims would release a very large volume of frozen credits, which would immediately flow into the channels of industry, of commerce, of finance. A very large part of these funds would be invested in American cotton, cottonseed oil, petroleum and its by-products, in metals, agricultural products, manufactured products, and the United States would be the beneficiary of increased revenue, of increased commerce passing through our ports, and from internal revenue.

The premises considered, we respectfully submit that a sound national policy justifies the immediate return of the German alien property and the liquidation of the American claims.

ROBERT L. OWEN.

The CHAIRMAN. That completes the list of witnesses.

Mr. ARMSTRONG. Mr. Chairman, might I have permission to file a very short supplemental memorandum? I filed a memorandum on yesterday with the committee, as you will remember.

The CHAIRMAN. Is this in answer to something else?

Mr. ARMSTRONG. It is in answer to a statement made by Mr. Hunt this morning.

The CHAIRMAN. These hearings are not to air disputes between two individuals. What we want to do is this: We consider the testimony that has been given, and your statement will be read in that way.

Mr. ARMSTRONG. I fully understand that but——

The CHAIRMAN (continuing). And so we do with any individual who disagrees with you.

Mr. ARMSTRONG. I find, however—if the chairman will excuse me for just a moment for taking up the time of the committee—that one of the fundamental questions, which is not primarily in connection with the shipping matter, was not covered. I thought it would be proper to submit it to the committee if they are willing to receive it.

The CHAIRMAN. How long will it take?

Mr. ARMSTRONG. I will not take up any of your time but will just offer it.

The CHAIRMAN. You have it prepared?

Mr. ARMSTRONG. Yes.

The CHAIRMAN. Just give it to the clerk of the committee and he will incorporate it in the record.

Mr. ARMSTRONG. All right.

(The memorandum furnished by Mr. Armstrong, is here made a part of the record, as follows:)

[United States Senate, Seventieth Congress, first session]

Before the Finance Committee of the United States Senate, in the matter of Settlement of War Claims Act of 1928 (H. R. 7201)

BRIEF

I have examined with great care the memorandum submitted to your committee by Messrs. William B. Devoe and E. W. Hunt as legal advisers in the United States for the North German Lloyd and Hamburg-American Lines in opposition to the plan proposed by me in the brief submitted to your committee and dated December 31, 1927.

The answer is most significant by reason of its complete failure to controvert the most important statements made in my brief, or to point out any injustice

in the proposed plan or even hardship beyond the postponement of the time when Germans will be fully compensated for property seized by the United States.

The shipping companies are mistaken in their entire conception of the plan proposed by me. They assume that I am suggesting that Congress should confiscate the property of the 83 Germans resident in Germany who had invested $500,000 or more each in the United States and apply the property or its proceeds to the payment of the American claims against Germany.

No such suggestion has been made. I proposed (1) that the value of the German ships be offset against the award to the United States against the German Government, on the ground that the German Government had heretofore compensated or would hereafter undoubtedly compensate the shipping companies.

And (2) that the property of German citizens residing in Germany who had invested more than $500,000 each be applied to the payment of the American awards under the provisions of the Berlin treaty whereby the said property was expropriated, and Germany agreed to compensate the former owners for the property so used.

There is no question whatsoever that if this course should be taken, the German Government would carry out its agreement and fully compensate all persons in this class who had not previously received compensation. (See original brief, pp. 7 and 8.)

I shall now answer categorically the questions which counsel for the shipping companies requests the committee to put to me. (See Shipping Co.'s brief, pp. 4 to 8, inclusive.)

1. I deny the statement that after the conclusion of my remarks before the Ways and Means Committee in November, 1926, beginning at page 97 of volume 4, of the hearings of that committee, the truth of my statements was challenged by counsel for the German shipowners and that I offered no substantiation of my accusations.

The fact as shown by the record is that counsel for the shipping companies did say at the conclusion of my remarks that he challenged the truth of every statement that I had made "reflecting upon the conduct and activities of those companies in this country during the war." (Hearings on alien property No. 4, p. 126.)

Immediately thereafter, however, he qualified this challenge by stating that his connection with the North German Lloyd Co. began indirectly in February, 1917, and "from the beginning of the war I know all that the North German Lloyd did here." (Hearings on Alien Property, No. 4, p. 129. See also p. 509.)

Mr. Devoe said that he was general counsel for the Hamburg-American Line and that in the hearings Mr. Hunt would speak for him. (Hearings on Alien Property, No. 4, p. 130.)

The following statement made by Mr. Hunt before the committee shows that he did not deny a single accusation made by me as to the acts of the shipping companies prior to our entry into the war. He knew nothing of these matters of his own knowledge. I said nothing as to what occurred after the entrance of the United States into the war on April 6, 1917. He said "With regard to the North German Lloyd, I stand here and assume responsibility for every act performed by that company in this country from the 6th of April onwards, because it did nothing except with my knowledge and under my advice." (Hearings on Alien Property, No. 4, pp. 126, 509.)

Of course, from April 6, 1917, until the conclusion of the war ships and docks of the German companies were in the possession of the United States Government.

As to the other matters which counsel asked the committee to inquire about, I beg leave to advise it as follows:

First. I am a native-born citizen and taxpayer of the United States, resident in the city of New York, and a member of the bar of the State of New York and of the Supreme Court of the United States, and have practiced law with an office at No. 52 William Street in the city of New York since my admission to the bar in 1906.

During the war against Germany I served as a lieutenant of Field Artillery with the Three hundred and sixth Field Artillery, Seventy-seventh Division, A. E. F., in France, and with the Fifty-fourth Field Artillery of the Eighteenth Division. Prior to that I served from July to December, 1916, on the Mexican border with Troop A, Squadron A, New York National Guard.

I do not represent any American claimant with an award from the Mixed Claims Commission against Germany, nor do I represent any German citizen whose property was seized in the United States by the Alien Property Custodian, or any German shipowner.

My interest in this matter is solely due to the fact that I believe that if the Green bill is enacted into law it will effect a grave injustice to the Government and taxpayers of the United States, and will deprive the American citizens with awards against Germany of over $100,000 each of 46 per cent of their awards for many years, which they are justly entitled to now.

When I appeared before the Ways and Means Committee in November, 1926, and on a previous occasion in April, 1926, when the Mills bill was under consideration (Hearings on Alien Property, vol. i, p. 275) I was a member of the law firm of Beekman, Bogue, Clark & Griscom, of 52 William Street, New York City, and represented certain American citizens, clients of that firm, who held awards against Germany from the Mixed Claims Commission. I severed my connection with that firm on July 1, 1927, and am now practicing law individually and no longer represent any of the said clients directly or indirectly. I prepared the brief which was submitted under date of December 31, 1927, without hope of reward, solely to give to Congress the benefit of an extended study of the subject running back more than five years and by reason of my sincere belief that if the American claimants failed to object to the provisions of the proposed bill owing to the fear that if they did so they would not even receive the 54 per cent which they are now hoping to get, Congress would be unjustly depriving its citizens of property to which they are immediately entitled and the Government of the United States would lose many millions dollars to which it is likewise entitled

These were my sole reasons for preparing the brief, coupled with the belief that the American Government should not be persuaded to pay any part of the indemnity due to its citizens for the wrongful acts of Germany after the loss of 100,000 American lives and untold treasure.

Second. As to the evidence tending to prove or disprove my allegations concerning the commission of wrongful acts by German citizens who invested their property in the United States, I beg leave to advise the committee that such statements were based on published opinions rendered by courts of the United States, upon the reports of committee of the House of Representatives, upon the report of Hon. A. Mitchell Palmer, as Alien Property Custodian, dated February, 1919, and upon a pamphlet dated July, 1918, prepared by Earl E. Sperry, professor of history in Syracuse University, issued by the Committee on Public Information, Washington, D. C.

Referring more specifically to the North German Lloyd and Hamburg-American companies, I beg leave to call the committee's attention to the following statements in a congressional report:

"Prominent officials of the Hamburg-American Line who, under the direction of Captain Boy-Ed, endeavored to provide German warships at sea with coal and other supplies in violation of the statutes of the United States, have been tried and convicted and sentenced to the penitentiary. Some 12 or more vessels were involved in this plan."

* * * * * * *

"Under the direction of Captain von Papen, Wolf von Igel, Dr. Walter T. Scheele, Captain von Kleist, Captain Wolpert of the Atlas Steamship Co., and Captain Rode, of the Hamburg-American Line, manufactured incendiary bonds and placed them on board allied vessels. The shells in which the chemicals were placed were made on board the steamship *Frederick der Grosse*. Scheele was furnished $1,000 by von Igel wherewith to become a fugitive from justice."

"Paul Koenig," head of the secret-service work of the Hamburg-American by direction of his superior officers largely augmented his organization, and under the direction of Von Papen, Boy-Ed, and Albert (financial adviser to the German Government), carried on secret-service work for the German Government. He secured and sent spies to Canada to gather information concerning the Welland Canal, the movements of Canadian troops to England, bribed an employee of a bank for information concerning shipments to the Allies, sent spies to Europe on American passports to secure military information, and was involved with Captain von Papen in an attempt to place bombs on ships of the Allies leaving New York Harbor, etc. Von Papen, Boy-Ed, and Albert had frequent conferences with Koenig in his office, at theirs, and at outside places. (H. R. Rept. No. 1, 65th Cong., 1st sess.; Congressional Record, vol. 55, No. 4, April 2 to April 28, 1917, p. 193.)

In United States *v.* Chemical Foundation (5 F. 2d, 191, p. 197, affirmed by U. S. Sup. Ct.), the court said:

"Employees of the Hamburg-American Line and Nord Deutscher Lloyd German-owned steamship lines kept close watch on the maritime business of the United States and reported to the German Government every ship and its cargo leaving these shores."

For other statements of the courts as to the activities of German investors, I refer the committee to the brief submitted by me to the Ways and Means Committee (Hearings on Alien Property, No. 4, pp. 117 to 120, inclusive), and particularly on pages 118, 119.

To the pamphlet on "German plots and intrigues" issued by the committee on public information in July, 1918.

As this pamphlet may not be readily available to the committee, I have caused a sufficient number of copies to be printed for its use.

I have, of course, been unable to make an independent investigation as to the truth of the statements contained in the said decisions, reports, and pamphlet, but I believe them to be true and am advising the committee of the sources from which the information was obtained.

I also call the committee's attention to the findings of fact made by the trial judge in the case of the United States *v.* Chemical Foundation, 294 Fed., pp. 308 to 312, inclusive (315, 316, 319), and particularly to the following language on page 308:

"The reports of enemy-owned property called for by section 7(a) of the act began to pour in. They came by the thousands. The extent of enemy ownership was amazing. It permeated every State of the Union and every Territory and insular possession. It affected every industry. Some it monopolized. It amounted in value to hundreds of millions of dollars. (Defendant's Exhibit No. 30, Ex. pp. 2103, 2104; R. pp. 2511, 2523–2525.) Much of this property was not innocently held, or held solely for the purpose of trade and commerce. It was found that before the war a number of German-owned insurance companies had insured a large number of properties here which the insurance agents periodically inspected. Another large German-owned company erected and installed railways within industrial plants and mills. It had possession of their ground plans and knew the details of their construction and arrangement. All this and like information acquired by other German-owned companies had been transmitted, it was found, to Berlin and there collated, indexed, arranged, and made available to German competitors and to the German Government. (R. p. 2754; Plaintiff's Exhibit No. 16, Ex. pp. 566–568.) A German-owned lumber company, located on Pensacola Bay, Fla., was seized by the custodian. It was found to own 'every advantageous place on the finest harbor in the Gulf of Mexico, the nearest harbor on American soil to the Panama Canal.' Its files were filled, not with business papers, but with pan-German literature. It was 'a distribution center for propaganda in this country.' The custodian found other properties that were similarly used." (R. pp. 2535, 2536.)

Third. The basis for my assertions regarding the payments of compensation by the German Government to German nationals for property seized abroad whose property was used by allied powers was the following:

When I appeared before the committee considering the Mills bill, in April, 1926, I stated that I had been informed that appropriations had been made in the German budget for 1924–25 to compensate its nationals for property seized abroad. (Hearings on Alien Property, p. 280.) The committee thereupon requested the Department of State to verify my information and a letter was furnished to it by the State Department from the German ambassador. (Hearings on Alien Property, vol. 1, pp. 281 to 285, inclusive.) This is the same letter which appeared in Senate Document 191 of the Sixty-ninth Congress, second session, page 17, referred to by counsel for the shipping companies.

I am aware of the fact that in that statement the German ambassador said:

"The German nationals affected by the confiscatory measures applied to their property by the allied powers have no hope for a further increase of the indemnification rates beyond the above limits, since any improvement of Germany's capacity to pay will have to yield primarily to an increase of the payments to be made by her under the Dawes plan for her obligations arising out of the war." (Hearings on Alien Property, vol. 1, p. 285.)

I made no suggestion that greater payments had been made up to this time to German nationals whose property abroad was used. What I said was that the German Government now proposes and there was pending last fall in the Reichstag a bill to appropriate 1,000,000,000 gold marks this year to be used in the future for compensation of German nationals whose property has been or may be taken over and these proposed payments were to be in addition to the amounts previously paid and that in a letter addressed to the agent general for reparations, dated November 5, 1927, the German Finance Minister stated that Germany was "required to indemnify her own nationals" and that countries who used the seized property "were released from the obligation to pay compensation."

The basis for this statement was a copy of the report of the agent general for reparations, December 10, 1927, pages 198, 223, sent to me by mail from the office of the agent general for reparations in Berlin.

It should be noted that no reference is made by the shipping companies to the suggestion made to your committee by the Undersecretary of the Treasury Mills in January, 1927, that the shipping companies whose property was seized in this country had heretofore been largely compensated in the form of subsidies. (Hearings of Finance Committee, January, 1927, p. 30.)

Fifth. When I stated on page 12 of my memorandum that under the Green bill the shipping companies might possibly recover $150,000,000 in all, I assumed that Mr. Mills's statement indicated that they had already been compensated by the German Government for the loss of ships to the extent of $50,000,000 and that if an award was made to them under the Green bill of $100,000,000, their total recovery would be $150,000,000.

I assumed that this committee would refuse as it did last year to provide for any further payment to the ex-owners of patents and of the radio station which had previously been paid for. (See S. Rept. No. 1394, 69th Cong., 2d sess., p. 9.)

It will be remembered in this connection that Senator Bayard, of Delaware, presented to the committee in January, 1927, a quotation from the book published by Ambassador Bernstorff, in which he said that, under orders from the German Government, the seized ships were put out of commission. In quoting from the book it was shown that Mr. Bernstorff had been receiving direct instructions from Berlin from time to time and it is quite evident that these instructions must have come over the German radio station. (Hearings Finance Committee, January, 1927, p. 97.)

Sixth. As to the charge made by me that Mr. Green, Chairman of the Ways and Means Committee, was mistaken as to the facts when he stated in the House of Representatives that the United States sold a small portion of the seized ships and some of the poorest ones brought $17,000,000 although all the ships were appraised at $33,000,000, it is evident from the statements appearing on pages 9 to 14, inclusive, of the brief for the shipping companies that my assertion was fully justified.

What I did was to compare what was called by counsel for the shipping companies the "sales price" of 44 ships (Hearings on alien property No. 4, p. 513), with the so-called "Proceeds of sale or insurance collected" on the same ships mentioned by Comptroller General McCarl in his statement submitted to this committee. (Hearings on alien property, Finance Committee, January, 1927, pp. 320–321.)

A comparison of these two statements was made in Exhibit A, page 25, of my brief, showing that Mr. McCarl's figures were $6,434,770 less than the shipping companies'.

Counsel now concedes that the table submitted to the Ways and Means Committee was erroneous. They admit the following mistakes:

1. They included the *President Lincoln* which was in fact sunk by a German submarine on May 31, 1918, as having been sold. (Hearings on alien property, No. 4, p. 625.)

2. They included the selling price of the *Prinz Eitel Friedrich*, which was not appraised at all, because it was a war vessel, though the table was intended to compare Navy appraisals with sales prices. (Hearings on alien property finance committee, January, 1927, p. 340.)

It seems surprising that counsel for the shipping companies could have made such mistakes. The war vessel of 8,797 yons belonged to the North German Lloyd Co. (Senate Document No. 191, p. 9.)

At the hearings on the Mill bill in the spring of 1926 Mr. Hunt, one of the counsel for the shipping companies, submitted a written statement to the committee in which he said:

"Steamship *Prinz Eitel Friedrich:* There were two German merchant vessels of this name. This correspondence relates to one which escaped from the German port of Kaio-Chow, in China, before the capture of the port by the allied naval forces. She carried away with her guns from the fort." (Hearings on alien property, vol. 1, p. 323.)

The ship of the same name which was sold for $60,000 and appraised at $142,400 (the amount given as the appraisal value of the war ship) had a tonnage of 4,650.31 tons and belonged to the Hamburg-American Line, and yet in the table submitted to the Ways and Means Committee in November, 1926, Mr. Hunt stated that the *Prinz Eitel Friedrich*, of 8,170 tons, appraised at $142,400 had a "sales price" of $800,000.

Counsel for the shipping companies also concede that they were mistaken in a number of other statements as to selling prices and finally explained that their table contains "sales prices as fixed in contracts" (brief, p. 9) as against cash receipts given in the comptroller's table.

I have studied all the testimony given before any committee as to this bill and the previous bills, and this is the first time that I have seen a concession that the original table contained any errors.

Knowing as we now do that it contained a number of material errors, it seems clear that Congress is no longer justified in relying thereon for the conclusion that the ships were sold for sums largely in excess of their appraised value.

For instance, it is now conceded the *Setos*, on which counsel gave a "sales price" of $975,000, was sold for $254,190. Their "sales price" in many instances was merely a price subject to adjustment downward. (Brief, pp. 10 and 11.)

Finally, counsel for the shipping companies contend that in Exhibits C, D, and E of my memorandum, pages 27 to 33, I failed to state the amount received as insurance in the case of four ships which were sunk.

If the committee will refer to page 15 of my brief it will find that I have stated 11 ships were sunk, burned, or stranded and that the Government collected a total in insurance of $2,714,165.92 on the 11 ships which were appraised at $4,980,260.

In the tables referred to I was merely making a comparison of appraisals and selling prices.

It is therefore apparent that, although it is true that $2,714,165.92 insurance was collected as a result of the loss of four ships, seven other ships were sunk upon which the Government was unable to collect any insurance.

Having endeavored to answer categorically the points made in the brief of counsel for the shipping companies, I beg leave to conclude by calling the committee's attention to the suggestions in my brief to which no answers whatsoever have been submitted by the shipping companies, viz:

1. There is no direct denial of the unneutral acts alleged to have been committed by the shipping companies and others between August 1, 1914, and April 6, 1917.

2. There is no denial of the suggestion that the shipping companies have been fully compensated for the loss of the ships seized in the United States by their own government by means of subsidies, grants, loans, etc., or that they will be compensated in the future if the ships are used for the payment of the claim of the United States Government.

3. There is no denial of the fact that the use of the ships and other seized property is fully authorized by the provisions of the Berlin treaty and that the German Government has recognized our right to so use them and has promised to compensate the former owners.

4. It is admitted that the list submitted by the shipping companies purporting to show certain German ships were sold by the United States Government for more than their appraised value contained serious errors.

5. There is no denial of the statement that under the present bill the American claimants who have awards in excess of $100,000 will only receive 54 per cent of their claims while the Germans will receive 84 per cent.

6. It is admitted that the Mixed Claims Commission is now considering the so-called sabotage claims, and there is no indication that some of these acts of sabotage may not be found to have been committed by German citizens who, under this bill, would immediately be entitled to recover the greater portion of their property.

7. And, finally, there is no denial that under the proposed bill the American Government can not expect to receive anything on its award until 25 years after September 1, 1928.

Respectfully submitted.

WILLIAM CAMPBELL ARMSTRONG,
Attorney at Law, New York City.

JANUARY 18, 1928.

The CHAIRMAN. There will be no further public hearings on this subject. The committee will meet to-morrow afternoon at 2 o'clock.

(Whereupon, at 4.05 p. m., Tuesday, January 24, 1928, the committee adjourned until 2 o'clock p. m., Wednesday, January 25, 1928.)


GP

RETURN OF ALIEN PROPERTY

WEDNESDAY, JANUARY 25, 1928

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment on yesterday, at 2 o'clock p. m., in the room of the Committee on Finance, Senate Office Building, Senator Reed Smoot presiding.

Present: Senators Smoot (chairman), McLean, Reed of Pennsylvania, Shortridge, Edge, Couzens, Fess, Greene, Deneen, Simmons, Harrison, King, Bayard, and George.

The CHAIRMAN. The committee will come to order. We will begin our hearings for the day. Captain Robert is here from Philadelphia. Captain, will you take a chair on the opposite side of the table from the official reporter?

Captain ROBERT. Certainly.

STATEMENT OF CAPT. W. P. ROBERT, CONSTRUCTION CORPS, UNITED STATES NAVY, FORMERLY A MEMBER OF THE BOARD OF APPRAISERS OF ALIEN SHIPS, PHILADELPHIA, PA.

The CHAIRMAN. What is your position?

Captain ROBERT. Captain, Construction Corps of the United States Navy, and superintending structure for cruisers under construction at the navy yard at Philadelphia.

The CHAIRMAN. You appeared before the Finance Committee of the Senate at its last hearing, did you not?

Captain ROBERT. Yes, sir; just a year ago.

The CHAIRMAN. Are there any errors in your statement made at that time that you have discovered as to the value of ships, as presented by you at that time?

Captain ROBERT. I have not discovered any errors; no, sir. I had not at the time read over my testimony, but I read it over this morning and found only minor errors of phraseology.

The CHAIRMAN. But nothing as to the facts?

Captain ROBERT. Nothing as to the facts, that is as far as I can remember.

The CHAIRMAN. Has anything developed since you testified before that would change your opinion as to the value of the ships at that date?

Captain ROBERT. No, sir; nothing to my knowledge.

The CHAIRMAN. Have you any particular statement that you could make now to the committee so that we might be informed as to how

the values were arrived at; whether or not in your opinion the valuation by the Navy Department was just under the conditions existing at the time; and if you care to do so we would like to have you enumerate some of those conditions, and also as to how and in what condition you found the ships at the time you made the valuations, and if the condition of the ships at the time you made the valuations was such that it would, of necessity, decrease the value of the ships by reason of the damages that were done at the time to the ships by their former owners.

Captain ROBERT. I think that my former testimony was fairly complete as to covering the question that has just been put to me by the chairman. But it might be just as well to give something of a résumé of——

Senator HARRISON (interposing). Mr. Chairman, why is it necessary to go over the matter so long as it is already in the record and Senators can read it in the record?

The CHAIRMAN. The only reason I asked the question was this: There have been statements made that of course are widely different from Captain Robert's former statement as to the values of the ships so that I wanted to know whether there had been any change in his opinion. And as far as I am personally concerned if there has been none I would just as leave take his former testimony.

Senator HARRISON. I understand that he says there has been no change, and his testimony was taken before quite fully.

The CHAIRMAN. It was.

Senator KING. Personally I should be very glad to hear a statement from Captain Robert. I did not have the advantage of his testimony before. I was on other committees and could not attend when the Captain testified. And in view of the statements made yesterday or the day before by Mr. Hunt, representing the German ship owners, it seems to me that this committee can with great propriety hear some testimony in regard to values, because when we write this bill we have got to take into account the facts as to whether those ships were approximately of the value indicated by the servants of our country, or whether we are going to remit the question to an umpire or some court to determine what the value was.

The CHAIRMAN. In that connection I want to say that since your testimony was last given before this committee there has come to me from several sources that many of these interned ships were used for active preparation of supplies for the use of the German army in the war, that munitions of war were manufactured on some of them, that parts of the ships had been taken and used by Germany for other purposes than on that particular ship, that bombs were manufactured on the ships, and if that be the case and you are aware of it, I should like to have the full facts that are in your possession.

Senator HARRISON. Mr. Chairman, before Captain Robert answers that question let me say this: I do not want any one to misconstrue my statement. Of course I should be very glad to hear Captain Robert, too, but I made the suggestion simply because he was quite full and complete in his testimony before, and he said that he had looked over it this morning and found it all right, and if that be the case any Senator on the committee could read it, and I made the suggestion merely for the purpose of saving time.

Senator KING. I so interpreted the statement.

The CHAIRMAN. You may proceed, Captain Robert.

Captain ROBERT. The board of appraisal of which I was a member had as its precept, its governing instructions, the Joint Resolution of the Congress approved May 12, 1917, which directed:

[Public Resolution No. 2, Sixty-fifth Congress]

Senate Joint Resolution 42

JOINT RESOLUTION Authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nations, and for other purposes

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all Territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

SEC. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation.

Approved, May 12, 1917.

At the time of the surveys of these individual ships they had been taken over by the Government from their interned condition. The board was confronted by the necessity of arriving at a basis for its appraisal. In other words, what were ships of the types under consideration worth within the meaning of the resolution I have just referred to.

One might argue that inasmuch as these ships were not free ships—that is, that they were interned and were not free to sail on the ocean under the control of any private party—that their value at the time was nil. On the other hand, one might argue that ships at that time that were sailing the seas were being destroyed very rapidly and that ships of that kind were naturally rising in value and did at that time have a very high value per dead-weight ton.

The board necessarily had to determine a basis for its procedure. There was available very considerable data as to the cost price of vessels over a number of years prior to and up to the time of the opening of the World War—that is, up to 1914. By examining all this data that we could get we found that the value of a new ship at the time these vessels were interned per dead-weight ton was so much for one size of ship and so much for another size of ship. We found that value to be fairly constant for ships of about 6,000 dead-weight tons and above, but greater than for ships from 5,000 dead-weight tons and under.

We therefore established for an average tramp steamer, and many of these ships under consideration came within that class and therefore this explanation will serve as our reason for the procedure

throughout—the board established a value per ton for ships of that size and of that general class as new.

Senator HARRISON. As of the time of the taking of the ships.

Captain ROBERT. As of the time of the internment of the ships.

Senator HARRISON. How long was that before the time of the taking of the ships?

Captain ROBERT. About two and one-half years.

Senator HARRISON. The resolution says at the time of the taking of the ships you were authorized to make a valuation.

Captain ROBERT. Yes, but we had to arrive at some basis.

Senator HARRISON. I understand.

Captain ROBERT. At the time of the taking of the ships by the United States there was no stabilized value for ships. We had to get something to work on. As to the value of these ships one might also argue that there would be a sale value for the ships as they stood, but that would have been highly speculative because the ships could not be used by any private individual during the course of the war, and how long the war was going to last, and how the various nations would come out at the end of the war, was entirely speculative. That might have been considered, but if so, it would have been such a speculative matter that it would not have been a basis to go on.

So that the value that the board determined on was the value of the ships as of their internment. And inasmuch as we had to determine this value, and inasmuch as the resolution stated that our report in the matter would be taken by the courts, we were compelled to arrive at a definite decision of one kind or another. And so after very mature deliberation we decided that that was the proper basis.

Senator HARRISON. As a general proposition was the value of ships at the time of taking, which I understood was two and a half years after they were interned——

Captain ROBERT. Yes.

Senator HARRISON. More in the market than it was at the time of the internment, or less?

Captain ROBERT. It was more because ships were being destroyed rapidly; and while there was no settled value for ships, they were worth what one could get and what they cost then, if ships could be sold. If ships free to sail the ocean could have been sold, they would have been sold at values higher than those the board used as a basis.

The CHAIRMAN. Those ships were interned at the request of Germany.

Captain ROBERT. Yes, sir.

Senator BAYARD. Then, in other words, you gave their valuation as interned ships and disregarded entirely the fact that the taking by the Federal Government opened a market to them or usability for them, which they did not have during the term of internment?

Captain ROBERT. I think the answer to that question would be yes, but may I enlarge my answer a little?

Senator BAYARD. Certainly.

Captain ROBERT. We took into account all of the attendant circumstances, which were, first, that the ships became interned ships and were not free to sail the ocean. Therefore, they did not have any sale value except a highly speculative value. Their sale value surely could not have been the sale value of a ship free to sail the ocean, because a ship free to sail offered the opportunity to its

owners to turn over their money in a very short time, if they did not lose the ship altogether. So that all things considered, and considering the circumstances, we felt that the only basis to go on was the basis of ships as of the date of internment.

Senator BAYARD. And therefore you disregarded absolutely whatever value they might have after the taking.

Senator KING. No; that is not it.

Senator BAYARD. I mean by the Federal Government, their usability.

Captain ROBERT. Whatever value they might have to the Federal Government as material for war? We did not base it on the war value to the Government; I think that is an answer to that question.

The CHAIRMAN. Or were they used in the war?

Captain ROBERT. They were used for war purposes.

The CHAIRMAN. After we took them over?

Captain ROBERT. Oh, yes. They were taken over by the Government. I was coming to that a little bit later, but I might say now in advance that as soon as we could get them in shape we used them for the transport of troops across the ocean.

The CHAIRMAN. And many of them were damaged, were they not?

Captain ROBERT. Oh, yes. I was going to come to that. Perhaps it might be better for me to finish my general statement and then I will be very glad to answer that question.

The CHAIRMAN. All right.

Captain ROBERT. I was explaining the general method of arriving at the value of the ships. Having determined the value of new ships as a basis, the board looked up all the records it could find of sales of ships of various ages, and taking an average of those values determined what might be called the curve of depreciation for ships. That is to say, for example, what would be the value of a ship six years old as compared with a new ship; or what would be the value of a ship 15 years old, etc., as abtained from the actual sales.

We got together all the data we could on that subject. We were then able to construct what might be termed a curve of depreciation, or a curve of relative values of ships of various ages.

The next step would be the examination of the ship. If upon examination we found a ship was 8 years old but materially better than the average ship of 8 years, we would assign a value of a ship of less age than that, say, 6 years or 7 years, depending on the circumstances. On the other hand, if we found a ship had been very badly treated, had not been kept up at all well, had been neglected, we would assign to it a value of a ship more than 8 years old, as shown by the above-mentioned curve. Many ships of course were quite naturally about on the curve except for the sabotage, which I will speak of later.

So that, using this curve of depreciation, and knowing the age of the ship and the tonnage of the ship, and determining whether the actual age of the ship was too much for the condition of the ship, or too small, we could very easily determine the approximate value of the ship on the basis mentioned, except for wanton damage that had been done by the acts of the crews at the time the ships were taken over. That is a matter that received very careful attention, because in practically every case, and so far as I can now remember in every case, the ships at the time of taking over had been dam-

aged; and the similarity of the damage was such that it appeared there was some central agency giving instructions in that matter.

Senator REED of Pennsylvania. Had the *Vaterland* been damaged?

Captain ROBERT. My recollection is rather vague on the subject of that particular ship, but I am under the impression that damage of some kind had been inflicted on it.

The CHAIRMAN. What kind of damage generally was done to the ships?

Captain ROBERT. The usual damage was to break the largest cylinders of the engines. That was done generally by drilling a lot of holes close together through the walls of the cylinders, so as to form practically a continuous line, and then by taking a drift pin tapering off to a very small point, and a hammer, and hammering the drift pin into the various holes until the cylinder cracked. Evidently it was felt that by inflicting damage of that kind to the largest member of the motive power of a ship it could not be put in condition for service for a very long time. But fortunately we found a means to repair those damages, largely by the use of a welding, which was then just becoming a very valuable industrial art.

The CHAIRMAN. What percentage of the ships were damaged in that way?

Captain ROBERT. My recollection is that practically all of them were.

The CHAIRMAN. The valuations that you were arriving at dated back to the fall of 1914, two and one-half years before we entered the World War.

Captain ROBERT. I should like to explain that a little.

The CHAIRMAN. What I should like to know is, have you any data touching those boats that were valued by your board, and if so, will you state it for the record?

Captain ROBERT. I will bring that out. The basis used for a new ship was that of the immediate pre-war period, the fall of 1914. The value assigned to any particular ship was the value of the ship at the time of the taking over, which was in April, in 1917.

The CHAIRMAN. But they were interned in the fall of 1914.

Captain ROBERT. Yes, sir. The estimated cost to repair the damage that was wantonly inflicted, with these various changes so estimated by the board, were deducted from what the board's estimate otherwise would have been.

The board also took particular pains to include the value of any coal or stores or special fittings, such as were on some ships. For example, on the *Vaterland* there were very valuable hangings and paintings and articles of that kind that would not be on the ordinary ship. We endeavored to include everything of value as required by the wording and the spirit of the resolution under which we acted.

Senator COUZENS. Have you any information as to how your estimates came out in actual practice? In other words, when ships were repaired and put in shape, how did that compare with your estimates in figuring the sabotage?

Captain ROBERT. The value that we set on a ship was the value that we felt the ship had on a pre-war basis, on the date it was taken over. The value of the ship after the repairs of any damages were made, would, of course, be somewhat greater.

Senator COUZENS. That is not exactly an answer to my question. You said you deducted from the value certain things. You first estimated the cost of repairing the damage, and so on. I wondered if that damage after it was repaired came out somewhere near your deduction.

Captain ROBERT. I understood your question to be as to the correctness of the estimate for the repairs of the damage.

Senator COUZENS. Yes.

Captain ROBERT. It is impossible for me to answer that question for the reason that the work done on a ship was naturally not confined to this particular work. There was work of various kinds to be done, including fitting out for special service as required. For example, in the case of the *Vaterland* it was necessary to rip out an enormous amount of fittings and install berths to take as many soldiers across as we could.

Senator HARRISON. That is, of course, you changed it from a passenger to a transport ship?

Captain ROBERT. Yes, sir; and the repairs and the changes went on simultaneously. It might be possible to obtain some figures in that matter from the records that would throw light on the question asked me, but I think it would be extremely difficult to get enough to give you really what you are after.

Senator COUZENS. You yourself have no figures on that?

Captain ROBERT. No, sir. It might be possible to compare it in spots only, but that being during war time I doubt if records were kept in such shape even that by going over the records in great detail you could make a comparison.

Senator MCLEAN. I have a communication from Prof. Borchard, of Yale, who has given this question considerable study, and it is a matter in which he is deeply interested. I want to quote one paragraph from the communication:

> With regard to the merchant ships, the bill contemplates a maximum payment of $85,000,000. In view of the fact that the sixth Hague Convention contemplated that enemy merchant shipping seized in port on the outbreak of the war should be paid for at current rates for tonnage regardless of its ownership, and inasmuch as we paid to Dutch, Norwegian and other ship owners at the rate of $300 per ton, the amount contemplated in the existing bill is less than one-third of the real value of the tonnage at the time of seizure. The naval appraisal was an exparte appraisal made on an admittedly erroneous basis. The testimony before your committee last session showed that it was made on the 1914 basis, and from that the great curve of depreciation was plotted. The joint resolution of May, 1917, provided that 1917 values were to be taken, which is the only substantial value on which requisition could be made. In an effort therefore to reduce the maximum sum of $85,000,000 for the ships seems hardly consistent with our profession to be fair.

Captain ROBERT. I have, in a measure, answered portions of that. I might repeat that insofar as the 1917 value of ships is concerned that that is not so simple as it would sound because of the circumstances surrounding this particular situation, which were peculiar. The ships were not free ships, and just what this legislation referred to is in regard to taking the value of the ships as of the date on which they are seized, I do not know; but that is a matter, of course, of policy.

The CHAIRMAN. We will assume so.

Captain ROBERT. But the board had the resolution of Congress to follow and endeavored to follow the letter and the spirit of that

resolution. And the commercial value of those ships might be said to be nil at that time, or it might be said to be at any rate highly speculative, because one might have bought the ships with a view of using them after the war, but no one under the sun knew when the war would cease or how it would come out, particularly at that time, as things looked very bad, indeed.

Senator McLEAN. What have you to say——

Senator KING (interposing). Senator McLean, do you interpret that statement of Professor Burchard's as meaning that in determining the factors for arriving at a basis of values that we ought not to take into account the fact that they were not free ships, but were interned?

Senator McLEAN. Apparently.

Senator KING. It seems to me his position is absurd.

Senator McLEAN. I call it to the attention of the committee because he has taken a great interest in it, and he is imbued with the idea that taking everything into consideration we should be fair, and evidently he does not think that the valuation set by the naval board was adequate under all the circumstances. He calls attention to the price paid for other ships, and apparently the House committee and the Members of the House agreed with the professor.

Captain ROBERT. In so far as his statement is that the board's report was that of an ex parte board, that may be allowed to stand, with the statement that it was the board appointed by the highest authority in the United States, and to the extent that the United States was at war with Germany it may be said to be an ex parte report of a board of the Government.

Senator McLEAN. What do you know about his statement that we paid the Dutch, Norwegian, and other countries for ships at the rate of $300 per dead-weight ton?

Captain ROBERT. I can not answer as to those particular figures, for those particular ships, but I do know that the sale value of ships at that time was soaring, that they were very high in individual cases, and that the owner of a ship could turn over his money in a very short space of time if he did not lose his ship altogether.

Senator REED of Pennsylvania. Did you find any instance of a sale of interned ships which would tend to guide you? I use the word "interned" in a formal sense because of course these were not formally interned.

Captain ROBERT. No, I did not, but I understand that a number of Austrian interned ships were sold before we declared war with Austria. But that is not a parallel case, because we had declared war against Germany and these ships were not free ships. Some Austrian ships, I understand, were disposed of before we declared war against Austria. But even if we knew the sale value of these ships such sale values would not be comparable with what we considered to be the values of the ships we were called on to survey.

Senator REED of Pennsylvania. In all cases of taking property by eminent domain under American law, the measure of the damage is the value to the owner in the condition in which the property was at the moment of the taking. And that value as near as it can be obtained is meant what would be paid by a willing buyer who is doing business with a willing seller. It seems to me that that was the measure of valuation that the resolution of May 10, 1917, intended. Is that as you understood it?

Captain ROBERT. If I understand, sir, that the resolution had in mind the board finding the value of these ships to be such value as ships that were free to sail the ocean at that time——

Senator REED of Pennsylvania (interposing). You did not catch my question.

Captain ROBERT. No; evidently I did not.

Senator REED of Pennsylvania. What I mean is, that the fact that these ships flew the German flag and did not dare in the condition of hostilities at the time to sail out of the harbor, was one of the conditions that your board had to consider just as much as it had to consider the condition of the rust on the hull. It was inherent in the vessels themselves that they were not free to sail the seas, as would have been the case with an American ship under the same conditions, so that the board considered that as one of the essential elements of value of the ships at that time.

Captain ROBERT. Yes, sir; it did. We took that into account, and all the circumstances in so far as we possibly could, and felt then that we were complying with the resolution.

Senator EDGE. How did you take that into account, on a percentage basis? Did you charge off so much, off the original material value because of that fact?

Captain ROBERT. We determined the value of a new ship, and then we determined the value of ships of various ages and drew a curve through the average values, and applied that curve reading, which represented a percentage, to the age or the modified age of any ship under consideration, modifying the age as I explained a short while ago, by adding to or subtracting from the actual age of the ship if it were in worse condition or in better condition than the average ship in our opinion would be.

Senator EDGE. That is as to the question of age. But now I am talking about the question of capacity for service. That would not go into the question of age, as they are all alike in that particular.

Captain ROBERT. No, capacity for service insofar as taking into consideration damage, or in regard to repairing damage of a ship and putting it into usable condition.

Senator EDGE. It seems to me it would be 5, 10, 15, or 20 per cent and applying it to each ship according to whether the ship was 5 years old or 20 years old. Your answer so far as ratio and age is quite clear, and I should say a very proper method to pursue. But now I want to find out how much you charged off, if there was any formula, because a ship could not be used.

Captain ROBERT. I would say that we charged off everything over and above the pre-war value of the ship. In other words, if the value of a free ship at that time was say, three times pre-war prices, we charged off twice the pre-war price, or rather we took the pre-war price for our basis, which woudl mean that we took the value of the ship as one-third what it would sell for in the market then if free to be sold, assuming that the value of a free ship at that time was three times the pre-war value.

Senator EDGE. That was rather an arbitrary decision.

Captain ROBERT. It was.

Senator EDGE. And you felt that it was a fair ratio?

Captain ROBERT. Yes, sir.

The CHAIRMAN. I understood you to say in the beginning that you took the 1914 value, and after that value you adopted a curve as to the increases that should be taken into consideration in that class of ships as between 1914 and when you took it.

Captain ROBERT. No, sir.

The CHAIRMAN. Then your curve was not as to price but as to depreciation?

Captain ROBERTS. Yes, sir.

The CHAIRMAN. Oh, all right.

Senator MCLEAN. I do not see how you quite came to the conclusion that they were worth anything.

Captain ROBERT. I think I stated that in the first instance that was an argument we considered. We considered all sides of the question so far as we could, and we would argue for a while, for instance, that they were not worth anything because they could not be sold for anything. On the other hand, we had before us the fact that other ships were selling for very much more than pre-war prices, and one might say that a ship could be sold on speculation to a private source for use after the war——

Senator MCLEAN (interposing). You came to the conclusion that they were worth 33⅓ per cent of what they would be worth if they could be sold.

Captain ROBERT. It would be 33⅓ per cent on the assumption that it could have been sold at three times the original value; yes, sir.

Senator MCLEAN. What items constituted the 33⅓ per cent?

Captain ROBERT. The fact that the board was called on to ascertain the value of ships was evidence in our mind that the ships were considered by the Congress as having some value, and that could well be supported by arguments. But we had the extremes to consider. For example, no value on the basis of their being capable of being used, and an inflated value based on the value of ships free to sail the ocean at that time. And the decision of the board, whether it was a wise one or not, is for you gentlemen to determine, was that the best answer that could be given was the value on the basis of prewar prices, taking into consideration age and condition of ship and what it contained.

Senator KING. Let me see if I understand it, at that value and any damage caused by sabotage. Assume that one of these ships which you priced was worth at the time of its internment, which was in 1914, to be $1,000,000 according to the market price of ships.

Captain ROBERT. All right.

Senator KING. And assume that it deteriorated during that period of two years and a half of internment, say, 10 per cent.

Captain ROBERT. All right.

Senator KING. That would bring it down to $900,000.

Captain ROBERT. All right.

Senator KING. And suppose that because of sabotage the damage was 10 per cent more, or in order to make it in round figures, was $100,000 more, which would leave $800,000.

Captain ROBERT. All right.

Senator KING. Suppose that at the time of your appraisement, or at the time we seized ships, a ship damaged as this was, with the sabotage, with the deterioration and all that sort of thing, but free

to sail the seas, free to be bought and sold in the world's markets, it would sell for $1,500,000. What value did you place on such a ship?

Captain ROBERT. The value you first named, which was $800,000.

Senator KING. One minute. I first said $1,000,000 when first interned, and then deduct 10 per cent for deterioration, and $100,000 for sabotage, and that then in that case it would leave $800,000.

Captain ROBERT. Yes; $800,000 would be the value.

Senator GEORGE. As I understand it you did not undertake to arrive at the value of the ship as a free ship at that time? You made no inquiry of what free ships were worth at that time so far as fixing your valuation was concerned, but you went back to the date of the internment and found a valuation, and reduced that by the amount of the depreciation, and then further reduced it by whatever damage you found inflicted on the vessel?

Captain ROBERT. Yes, sir.

Senator EDGE. I understood you to say that your appraisal was one-third of the prewar value.

Captain ROBERT. Well, Senator Edge, I merely used that to illustrate the case asked me, on the assumption, for example, suppose a free ship at the time of the taking over of these ships would sell for three times the value that ships sold for in 1914, then by considering the 1914 value as a basis, we would be discounting all the inflation and injury due to the acts of the enemy.

Senator HARRISON. Then you did not, in valuing, give any part of the increase up to the time of the taking?

Captain ROBERT. No, sir.

Senator HARRISON. In other words, you did not consider that the resolution, where it said taking over, meant that it should be valued as of the time of the internment?

Captain ROBERT. I think I would say that we endeavored to give the value at the time of the taking over, but we considered all the circumstances and it was the real value at that time on the basis of the prewar period. We took the value at that time because we took the value of the ship as of an age as at that time, so that if a ship was 10 years old when interned and it was 12½ years old at the time when taken over, we gave it a value appropriate to 12½ years on the basis of prewar prices.

Senator SHORTRIDGE. When was the appraisement made?

Captain ROBERT. Appraisals were made from time to time, beginning shortly after this act of May 12, 1927, and naturally spread over some months. There were 97 ships, as I remember it, that were appraised, and naturally that would take a considerable length of time.

Senator SHORTRIDGE. And those 97 ships were interned during 1914, were they not, or were they?

Captain ROBERT. They were interned at the time of their arrival in United States ports.

Senator SHORTRIDGE. From time to time?

Captain ROBERT. Yes.

Senator SHORTRIDGE. After August, 1914?

Captain ROBERT. Yes, sir.

Senator SHORTRIDGE. Is that right?

Captain ROBERT. Yes, sir; the most of them were in ports I think at the time of the opening of the European war.

Senator REED of Pennsylvania. Just to keep the record straight, they were never legally interned, but those ships took refuge in American harbors and did not dare leave, and that was the legal status of it, was it not?

Captain ROBERT. So far as I know, it was.

Senator SHORTRIDGE. Of course at the time you were making these appraisements the war was still on.

Captain ROBERT. Yes, sir.

Senator SHORTRIDGE. And of course there was no way for you to determine when that war would end.

Captain ROBERT. Absolutely no way.

Senator SHORTRIDGE. And hence there was no way of determining when the ship in question would be free.

Captain ROBERT. Or what the ships would be worth at the end of the war, whose duration was highly speculative.

Senator SHORTRIDGE. Let me ask you, and perhaps it is an idle question, but while they remained there interned awaiting the termination of the war, they suffered from deterioration in value?

Captain ROBERT. They suffered from deterioration in value in addition to the sabotage that had been inflicted on them.

Senator SHORTRIDGE. But leaving the sabotage out entirely.

Captain ROBERT. Yes, sir. We found that some of them had received very good attention evidently up to the time of the actual taking over; and then we found some filthy dirty as if having received very poor attention. We took those matters into consideration in determining whether such a ship was of the value of the average ship of that age, or a little more or a little less.

Senator SHORTRIDGE. In estimating the value of a ship by its age, do you take into consideration whether it is always in service or only a part of the time and a part of the time laid up?

Captain ROBERT. The curve of averages was based on averages and not on a ship being fully in service all the time or partly out of service; although I would say that no doubt nearly all the records were of ships in actual service, because ships were continually in service. And I might also state that a ship out of service may deteriorate more than a ship in service, if it is not well cared for.

Senator SHORTRIDGE. That is what I wanted to get at.

Captain ROBERT. Yes, sir.

Senator SHORTRIDGE. I understand that even the value of a ship is said to be measured by its age. Now, is that an arbitrary measuring of the value of a ship, as, for example, that it is 10 years old, or 15 years old, or 20 years old, regardless of whether it has been in service?

Captain ROBERT. It is so arbitrary that, as I previously stated, the board carefully examined the ship from a matériel standpoint and determined whether the ship then inspected was in better condition or in a condition equal to or a condition worse than the average ship. That, of course, was a matter of judgment, and had to be determined by someone as a matter of judgment, and that was one of the principal duties that fell to the board.

Senator SHORTRIDGE. The age of a ship is one of the elements in arriving at its value at a given time?

Captain ROBERT. Yes, it is; and you will find that the sales of ships largely corroborated the curve of depreciation. As I remember

it, it was fairly within the curve. Various ships of equal ages would bear about the same percentage to the same ship when new, one to the other.

Senator SHORTRIDGE. And, of course, you inquired into the age of each and all of these ships?

Captain ROBERT. We had all of the records.

Senator KING. Notwithstanding the curve that you used, you made a physical inspection of the ships and gave to them a greater value or less value depending upon the care which had been bestowed upon the individual ship.

Captain ROBERT. Exactly.

Senator FESS. When you estimated the value of a new ship did you put it on the basis of reproduction cost?

Captain ROBERT. Not on reproduction cost during the war, but on pre-war value. Reproduction costs during the war were soaring. We based them all on cost just prior to the opening of the war in Europe in the summer of 1914.

Senator FESS. Would that be in foreign shipyards or in American shipyard?

Captain ROBERT. Those particular ships were foreign ships, and we got, largely from trade journals and various other sources, records of sales and of contract values for new ships, and were able to establish a very definite depreciation curve. So that we had no hesitation in our own minds as to the value of the work. And it might be pertinent to add that so far as I can now remember, there was not at any time a moment's dissent among the members of the board, except, perhaps, as to the element of judgment as to whether a certain ship was better than the average ship, say, by a year and a half, or something of that kind, or worse than the average ship by a year and a half or something of that kind, where judgment would naturally enter into the case, and where naturally we would compromise after the individual members of the board conferred on it, if that were necessary. But I will say that we were very close together in all the general policies, in fact, that we were unanimous in that matter, and that we were very close together in the matter of judgment in these other questions.

Senator MCLEAN. Were there three members of the board?

Captain ROBERT. Five members.

Senator GEORGE. Who were the members?

Captain ROBERT. The senior member was Captain Gill, since deceased. Another member was Captain Theiss, who died before we completed our work, and whose place was taken by another officer, who was Lieutenant Commander Joyce. I was another member, and Paymaster Higgins was another member, and Mr. Daniel Cox, a former naval officer but now a very prominent naval architect, was the fifth member.

Senator HARRISON. Did you have any engineers outside of the Navy on this work, who had had actual experience in the construction of ships?

Captain ROBERT. Mr. Cox was a Reserve Officer at the time. He was a former Navy man, but had been practicing as a naval architect for a great many years. The board at the time, however, was composed solely of members in the Navy or Naval Reserve. Of course

we got such information or data as we could from any source obtainable.

Senator KING. I suppose the Senator means did you consult any naval architects or builders outside of the Navy.

Captain ROBERT. In so far as we got the records of trade journals and so forth, yes, sir. I remember consulting one or two very prominent men in the shipping service, asking for their opinions. But, of course, we felt that we had to merely weigh their opinions, merely use such information as we could get regardless of the source to help us to arrive at the very best answer we could possible give.

Senator EDGE. In a general way did that information coincide fairly nearly with your judgment, when you asked outside men?

Captain ROBERT. I can only remember one or two cases of actually approaching outside concerns to ask about some very special ships. So I could not answer your question very positively or very negatively.

Senator REED of Pennsylvania. Were any representatives of the owners heard by your board?

Captain ROBERT. No, sir.

Senator REED of Pennsylvania. There was no evidence offered by them and no argument presented by them?

Captain ROBERT. I would qualify my statement by saying that where there was any opportunity to get in touch with any of the heads of those concerns where any values, particularly values of special articles on board ship, we did so. We took whatever means we could to get in touch with any representatives that there were. But we did not withhold our reports until we could get in touch with them. Nor did we feel that it was essential to do that, because at the time there being a State of war, my recollection is that it would have been very difficult to have obtained such information. But we were highly receptive to any information that we could get regardless of the source.

Senator REED of Pennsylvania. Did any representative of the United States, in an effort to hold down your valuation, present arguments to you or furnish evidence to you?

Captain ROBERT. No, sir. We felt that we were as far as we could possibly be an impartial board.

Senator REED of Pennsylvania. As impartial as the citizens of one country could be towards the citizens of another with whom they were at war?

Captain ROBERT. Yes, sir; that is the point.

Senator REED of Pennsylvania. But as I understand it, this board of which you were a part did not allow either side, so far as you could prevent it, to produce evidence or make arguments to get you to increase your valuation or to get you to reduce it? You arrived at your own conclusion in your own way?

Captain ROBERT. It would not be correct to say that we did not allow them to present to us any information, because, as I stated before, we were in a highly receptive mood for any information we could get. But such a thing as having the representatives of the former owners, on the one hand, or of representatives of the United States other than ourselves, on the other hand—that did not take place. We proceeded with our work, after having established this basis for a report, and proceeded in the matter to determine the material condi-

tion, and that was a matter of inspection and of judgment. One man's judgment might lead to a higher valuation than another's, but generally, as I stated before, we were very close together in our judgment.

Senator EDGE. Several of these ships were in New York Harbor, were they not, in Hoboken?

Captain ROBERT. Yes.

Senator EDGE. At that time, as I recall, in 1917, the officers of both the North German Lloyd and the Hamburg-American Line, with large staffs and managers, etc., were still there. Did they ever attempt to approach the committee in any way in connection with the valuations?

Captain ROBERT. I remember no instances whatever, although I am under the impression that we attempted to get data from them on certain occasions, with what success I can not now recall, but with rather indifferent success, according to the best of my recollection.

Senator EDGE. That is what I wanted to find out. Did they seem to be in any way anxious to give you any information? They certainly had it all in their possession as to original cost.

Captain ROBERT. My recollection is that they certainly did not press anything upon us, but that is recollection after something like 11 years. I think if they had attempted to urge any information upon us I would have remembered.

Senator SHORTRIDGE. Was there any written application for leave to present facts before the commission?

Captain ROBERT. I can remember none, sir.

Senator SHORTRIDGE. Mr. Chairman, has the witness stated his present views as to the estimate arrived at?

The CHAIRMAN. He was just presenting them when he was interrupted.

Senator SHORTRIDGE. May I put the question, then, in this form: You arrived at a certain valuation of these ships?

Captain ROBERT. Yes, sir.

Senator SHORTRIDGE. As of now, to-day, when we are at a state of peace, do you adhere to the conclusions reached by the commission?

Captain ROBERT. I have no reason whatever to alter the report.

Senator KING. Is your judgment, in the light of subsequent events, the same now as it was then, or do you have anything which would change the findings that were then made or the values which you then rendered?

Captain ROBERT. I have not.

Senator KING. Was there sabotage other than the injury to the cylinders?

Captain ROBERT. My recollection is that in a few cases certain vital parts were thrown overboard, certain small vital parts, such as, for example, a portion of the steering gear, or something of that kind. The sabotage generally, though, was of very uniform character, namely, injury to the cylinders.

Senator FESS. Is there any equity in the suggestion that a settlement 10 years afterwards should not be placed on the same basis as reproduction cost 10 years ago?

Captain ROBERT. Would you mind repeating the question?

Senator FESS. I say, is there an equity in the statement that a settlement that comes 10 years later—that is, this was done 10 years

ago—should be placed upon a different basis of cost of construction from what it cost at the time, which was 10 years ago? In other words, if it were reproduced to-day it would be a great deal more expensive than if it were reproduced 10 years ago.

Captain ROBERT. I would say that that is purely a matter of policy with which the Congress has authority to deal, and there is, as far as I know, no established custom for settlement of cases after wars, because, happily, wars are not so frequent as that.

Senator KING. You must remember, Senator, that if there has been any delay in the settlement Germany is to blame as much as we are, if there is anybody to blame. If Germany had been paying the American nationals after the war she would have been compensated for those ships. So she can not set up an increase in damage because of delay in settlement when she has delayed paying American nationals.

The CHAIRMAN. Did you find that any bombs had been manufactured on any of these boats?

Captain ROBERT. No, sir.

Regarding the question that was asked at the beginning of the session this afternoon, as to whether any munitions, bombs, etc., were manufactured on board the interned ships, I can only answer that by stating that I remember no evidence whatever to that effect. There were at least two interned ships that were classed as men-of-war, namely, the *Kron Prinz Wilhelm* and the *Prinz Eitel Friedrich*. There was a *Prinz Eitel Friedrich* that was a merchant ship, but there was another *Prinz Eitel Friedrich* that was a man-of-war; and those two men-of-war we did not inspect because they did not come within the purview of this resolution of Congress that related to ships owned by citizens or corporations of a foreign enemy.

Senator KING. You appraised all the ships, did you, except those two ships—tugs, small boats, and all?

Captain ROBERT. My recollection is that we appraised 97 ships.

Senator KING. Were there any others that you knew of that you did not appraise?

Captain ROBERT. None that came within our understanding of the purview of the resolution of Congress. We took our instructions as to what ships we should inspect from the Secretary of the Navy. I know of no ships that under that resolution should have been inspected and appraised that were not so inspected and appraised.

Senator KING. Did you follow up any of those vessels after their appraisement and learn of their sales subsequently?

Captain ROBERT. I understand that a number of them were sold afterwards and that possibly some of them may have brought prices very much greater than we gave. For example, if a ship had been sold immediately after the armistice, just at that time and for some months afterwards ships were very highly valuable. I have heard of ships paying for themselves in, shall we say, one or two trips; and if any of them were sold at that time they naturally would have been sold at a very high figure.

I can not answer authoritatively as to that, because it would not have come under me, but it is quite possible it did occur.

Senator KING. You did not follow them up, then, with a view to determining it?

Captain ROBERT. No, sir.

The CHAIRMAN. Senator, if you will refer to the hearings held last year, I think you will find that there were six ships more than the commission really appraised, and also the hearings will give you the reasons why they were not appraised at the time. They were very small and they were in bad shape.

Senator KING. It is my recollection that there were a few tugboats, but they were comparatively valueless.

The CHAIRMAN. I forget the names of them.

Senator MCLEAN. Does it appear in the record how many of those ships were sold and how many are still in the possession of the Government?

The CHAIRMAN. It is already in the record.

Senator SHORTRIDGE. I assume, Captain, that you think that no one would have paid more for these ships as of the time of your appraisement than the amount you had fixed as their value?

Captain ROBERT. I would assume that, sir, but at the same time I would say that if any one had bought them it would have been so highly speculative that it depends on the speculative proclivities of the particular individual. It would be a question of gambling.

The CHAIRMAN. If the war had gone otherwise than it did the story would have been quite different.

Captain ROBERT. Yes.

(Witness excused.)

STATEMENT OF HON. EDWIN B. PARKER, OF HOUSTON, TEX., UMPIRE MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY; COMMISSIONER, TRIPARTITE CLAIMS COMMISSION, UNITED STATES, AUSTRIA, AND HUNGARY

The CHAIRMAN. Judge Parker, I had a note handed me yesterday during the hearing, signed by a party by the name of Katz——

Senator KING. He represents some of the German ship owners.

The CHAIRMAN. He says:

Doctor von der Decken (in the committee room now) informs me the sabotage claims are now being considered by the Mixed Claims Commission, are waiting for their brief, and that the German Government are willing to enter into a stipulation that the commission can compel the coming in of the German Government.

Do you know anything about that?

Mr. PARKER. Yes, Mr. Chairman. I was not at the hearing here yesterday afternoon, but I understand that some statement was made to the effect that the German agent was delaying the hearing by the commission of the sabotage claims.

The CHAIRMAN. The intimation was to that effect, if not the clear statement.

Mr. PARKER. The German agent seemed to be very much concerned about it. He came to see me late yesterday afternoon and asked me to state to him whether or not there was any foundation for such a statement. I told him that to my knowledge there was not, but that the American agent (who is present here) could probably speak with more accurate knowledge because those cases were not at issue and had not been submitted to the commission. But I do know that the American and German agents have been cooperating to bring them to an issue.

The rules of the commission provide (Rule VI (*a*)) that:

> The order in which cases shall come on for submission before the commission shall be determined by (1) agreement between the American agent and the German agent, subject to revision in the discretion of the commission; or (2) order of the commission.

The commission has power to bring a case to an issue if it is unduly delayed.

There has been no disposition on the part of either agent to unduly delay the submission of any case during the entire existence of the commission.

Senator McLEAN. It was stated that there was nothing in the law requiring the German interests to present their claims. Is that order based upon the law, or is that just an order of the commission?

Mr. PARKER. The commission is constituted, Senator, under the agreement of July 10, 1922, between the Governments of the United States and Germany. The commission promulgated these rules. Like any tribunal, necessarily it must make its own rules for its orderly procedure.

These rules further provide (Rule VI (*b*)) that:

> The American agent shall give notice to the secretaries and through the secretaries to the German agent, when he is prepared to present a case to the commission, and at the same time may file with the secretaries a brief prepared by the agent or his counsel, or a brief prepared by the claimant if countersigned by the agent and such proofs in support thereof in addition to those filed in pursuance of subdivision (*a*) of Rule IV hereof as he may desire to present. The German agent shall thereafter have such time, within which to file a brief and opposing written statements or documents, as may be fixed by the commission from time to time by general or special order. Either the American agent or the German agent may thereafter file such additional proofs and/or briefs at such time and on such conditions as the commission may in its discretion permit.

So that the German agent does not have it in his power, if he cared to do so, to unduly delay the submission of these cases.

Let me say that those sabotage cases are very large cases. There is a very large amount claimed.

The CHAIRMAN. Twenty million dollars.

Mr. PARKER. Yes, approximately. They grow out of two explosions, one known as the Black Tom explosion on the Lehigh Valley Railroad, and the other at the Canadian Car & Foundry Co. plant, both in New Jersey. There are some sixty-odd cases, as I recall, although they have not been submitted to the commission. Not only are the claims put forward by the property owners but also by some sixty-odd insurance companies who had paid claims on account of the damage.

The CHAIRMAN. There are about 200 claims still unsettled?

Mr. PARKER. Two hundred and sixteen claims. They are not all sabotage claims.

Senator McLEAN. If the German interests did not appear would you render judgment by default?

Mr. PARKER. The German agent has filed answers in those sabotage claims and submitted his evidence.

Senator McLEAN. You have jurisdiction?

Mr. PARKER. Yes; we have jurisdiction in any event. But if Germany in any case should arbitrarily decline to file an answer to the American memorial or submit testimony within the period prescribed by these rules, the commission would consider that case on

its merits, not by default, but on the merits of the case made by the American agent.

Senator McLEAN. If they deliberately declined to appear and make any presentation, would you feel justified in rendering judgment in the case?

Mr. PARKER. Unquestionaly we would take the case as presented by the American agent and decide it according to the record made by the American agent.

Senator EDGE. In this connection, with reference to this particular Lehigh Valley case that you referred to, as I recall, Mr. Boles yesterday said that within the last few days, after almost, as I recall it, nine months or thereabouts, the answer from the German Government was filed. Is that correct?

Mr. PARKER. About a month ago.

May I read, Senator, or put into the record a statement that the German agent addressed to me about noon to-day?

Senator EDGE. Of course, I think it is very important. I simply wanted to follow up that question, then, by asking you in the ordinary course of your deliberations, with this answer filed a month ago, when you would actually consider finally the case.

Mr. PARKER. Those particular cases, Senator, are waiting on the claimants to file their brief. The answer of the German agent and his supporting evidence were filed, as I recall, about a month ago. There was considerable delay in getting that answer in, probably 9 months after the claimant's case was in. The claimant has had several years to prepare and file its case. I think that probably it has not been as prompt as it otherwise would have been because it had hoped for settlement. Despairing of that, some months ago it became diligent and prepared its case. That supporting evidence consists of some four hundred exhibits. The record is about that thick [indicating].

Senator REED. About two feet and a half, Judge Parker indicates.

Mr. PARKER. Probably two and one-half feet in thickness.

The German agent took that record and studied it. He was necessarily at some disadvantage in procuring evidence in Germany at this late date to meet and rebut the testimony that was offered by the American claimants. He did, as I now recall, about a month ago file his answer and his evidence in rebuttal. Then, under the rules, the next move is for the claimant and the American agent to prepare their brief. As soon as they prepare their brief the German agent will have a limited time within which to prepare his brief, and then the case will be at issue and submitted to the commission for hearing.

Senator EDGE. Does that statement touch directly on this case? If it is not too long, I would like to hear it.

Mr. PARKER. May I say here that, of course, I know nothing of the merits of this case; it has not been submitted. I may say, parenthentically, that I have been urging both agents to get the case submitted at the earliest possible moment because we want to get throught, and they have, I think, been diligent in seeking to prepare their cases.

May I read this, then? It is addressed to me by Karl von Lewnski, agent of Germany:

I understand that a witness who appeared before the Senate Finance Committee to-day made the statement that he believed there was a disposition and purpose

on the part of the German agent and the German Government to delay the presentation of a certain case before the Mixed Claims Commission, and that it was within the power of the German agent and the German Government to so delay the early adjudication of the case. As to the last assertion, I am confident you will agree with me that the witness in question was mistaken and that under its rules the commission may and does compel the presentation of briefs and arguments and the preparation of cases for final submission to the commission within a reasonable time. As to the statement that there is any thought or purpose on the part of the German agent or the German Government to delay the presentation and adjudication of this or any other case, I desire to enter a most emphatic denial.

The present status of the case in question is, as you know, that the German answer to the claim has been filed and is in the possession of the claimant for approximately a month. This case now awaits the filing of the claimant's brief. In order that there may be no question as to the early adjudication of the case, I am prepared to enter into a stipulation and agreement to the effect that the American agent shall have such time as he may desire, not to exceed 60 days, within which to prepare and file his brief; that after the filing of the brief of the American agent, the German agent shall have not to exceed 30 days in which to file his brief and that thereupon the case shall be submitted to the commission for final adjudication.

I have the honor to be, sir,
Your obedient servant,

KARL VON LEWINSKI, *Agent of Germany.*

Senator EDGE. Mr. Boles handed me this correction of his testimony, and if there is no objection I will give it to the reporter. It deals with the particular point raised in the letter. He says:

I ought to say to the committee at this point that in mentioning Doctor Kiesselbach and Doctor von Lewinski I did not intend to imply that they, or either of them, personally or intentionally delayed the consideration of our case; but I do say that the German Government officials in Berlin, according to our firm belief, caused the delay to which our case has been subjected.

Mr. PARKER. I do not want to take up the time of the committee on this matter——

The CHAIRMAN. Just a moment, please. Would the committee like to sit until about 5 o'clock? If so, we will have Senator Sutherland come up and get through with it to-night.

Senator KING. A very important matter comes up in the Senate at 4 o'clock.

Senator REED. Regardless of what we may think of the reasons advanced by Mr. Boles in his discussion of this Black Tom situation, it occurred to me that there was some merit in the amendment which he suggested, which was that there ought to be no distribution to claimants over $100,000 until all of such claims had been adjudicated by the Mixed Claims Commission, because, obviously, until that had been done it would not be possible to know what percentage could be made as to each of those large claims.

Do you see any objection to the inclusion of that in this bill, Judge?

Mr. PARKER. On the contrary, I think it would be a very good amendment, if I may express my personal views about it.

Senator REED. It is almost a necessary amendment, is it not?

Mr. PARKER. As umpire, I have no views about it; but personally I think it would be an amendment that might well be inserted——

The CHAIRMAN. The bill provides that already, does it not?

Senator REED. That is what I understood Mr. Boles to urge, and the only thing I understood him to urge. But if it is already in the bill, all right.

The CHAIRMAN. As I understood him. I did not question him yesterday.

Mr. ALVORD. I think I can make that clear.

Senator REED. Mr. Alvord says he can make that clear.

Mr. ALVORD. Mr. Boles's amendment is not in the bill. If the committee adopts that policy we will have to prepare an amendment similar to the one which he suggested. But under the bill it would be impossible to make any allocation of the awards in excess of $100,000 for the payment of the $100,000 upon those awards until all the awards had been certified.

Senator REED. Is not that all he wants?

Mr. ALVORD. As I understand his amendment, he wants to prevent the return of the property in the hands of the Alien Property Custodian until the Mixed Claims Commission has acted upon and disposed of every case pending before the commission at the present time.

Senator EDGE. Which is the 80 per cent.

Mr. ALVORD. Yes; and the bill provides for the immediate return of only 80 per cent.

Mr. PARKER. Senator, I so understood Mr. Boles' suggestion, although I got it second-hand.

Senator REED. I misunderstood it, then.

Mr. PARKER. That he was opposed to returning to Germany—any part of the alien property until the Mixed Claims Commission should certify that all of the claims had been disposed of.

Senator REED. And if I correctly understand your testimony to-day, Judge, it is that the German agent and the German Government have shown no disposition to delay or to prevent consideration of any case which would justify any such pressure being imposed upon them.

Mr. PARKER. I know they have not. However, when that suggestion of Mr. Boles was repeated to me I asked Dr. Kiesselbach, the German Commissioner, if there was any objection on his part or on the part of Germany to such an amendment, and he said there was not; that Germany was prepared to expedite the disposition of these claims in every possible way, and that so far as they are concerned they would not object to such an amendment.

Senator KING. That would not prejudice the paying to the American nationals of such awards under the bill?

Mr. PARKER. Simply a question that pending the time when the Mixed Claims Commission should certify that all of the claims now before it were disposed of no part of the alien property should be returned to the Germans.

Senator EDGE. It in no way interferes with the distribution to the American claimants of the 20 per cent?

Mr. PARKER. I feel very certain of it. While there is no necessity for that amendment, I feel very certain that the Mixed Claims Commission will complete its task before the machinery can be set up for the return of any of this alien property.

The CHAIRMAN. I do not think there is any necessity for it. I did not think so yesterday.

Senator SHORTRIDGE. I have received a great many letters from time to time in regard to the—we will call it the delay—necessary in disposing of these claims. May I ask the judge, how does your commission gain jurisdiction over a given claim?

Mr. PARKER. Not until the American Agent has filed it.

Senator SHORTRIDGE. Under your rules, if there be any written rules, how long a time has the German agent to put in his reply?

Mr. PARKER. Fifteen days after the memorial is filed by the American agent.

Senator KING. I move that we adjourn until 10 o'clock to-morrow morning.

The CHAIRMAN. The committee will stand adjourned until 10 o'clock to-morrow morning.

(Whereupon, at 3.30 o'clock p. m., the committee adjourned until to-morrow, Thursday, January 26, 1928, at 10 o'clock a. m.)

RETURN OF ALIEN PROPERTY

THURSDAY, JANUARY 26, 1928

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment on yesterday, at 10 o'clock a. m., in the room of the Committee on Finance, Senate Office Building, Senator Reed Smoot (presiding).

Present: Senators Smoot (chairman), McLean, Curtis, Shortridge, Couzens, Fess, Greene, Deneen, Harrison, King, Bayard, George, and Walsh of Massachusetts.

The CHAIRMAN. If the committee will come to order we will begin the hearing.

Mr. William F. Norman, an attorney at law, desired to appear here as a witness, relative to two Danish ships. I told him the public hearings had been closed, and that if he could send to the committee a statement that he would have made before the committee if there had been a continuation of the open hearings, I would have it put into the record. I now offer a statement that he has submitted, and ask the reporter to include it in the record at this point.

(The statement is as follows:)

SOUTHERN BUILDING,
Washington, D. C., January 25, 1928.

HON. REED SMOOT,
Chairman Finance Committee, United States Senate,
Washington, D. C.

MY DEAR SENATOR: Inasmuch as I did not make a statement before your committee yesterday at the hearing on H. R. 7201 respecting the two Danish ship cases in which I am counsel, it is respectfully requested that the attached statement of facts be incorporated in the committee's report and made a part thereof.

Attached to the statement of facts is my proposed amendment to the bill which, I believe, if adopted, would give the Danish nationals the relief sought, and I trust that your committee will consider it in connection with my statement.

I feel that it is not only to the interest of my clients that this be done, but that it is of vital importance to the committee as a whole that they have the facts respecting these neutrals before them when the bill is being considered.

Respectfully yours,

(Signed) W. F. NORMAN,
Attorney and Counselor at Law.

STATEMENT OF W. F. NORMAN, COUNSEL FOR THE DANISH FIRMS OF M. JEBSEN AND RHEDEREI M. JEBSEN, RESIDENTS OF THE CITY OF APENRADE, PROVINCE OF SCHLESWIG-HOLSTEIN, DENMARK, MADE IN CONNECTION WITH THE HEARING ON H. R. 7201

This statement is made on behalf of the Danish firms of M. Jebsen and Rhederei M. Jebsen, whose vessels, the *Carl Diederichsen*, of the gross tonnage of

1,243.15, and the *Johanne*, of the gross tonnage of 1,530.88, were among the 106 vessels seized under the joint resolution of Congress of May 12, 1917.

These two vessels were leased and chartered for trading purposes on December 12, 1917, by the Shipping Board to the Philippine Government until June 7, 1920, when they were sold to foreign corporations for the respective sums of $200,000 and $174,600.

Before this sale was consummated, however, and before the peace treaty between the United States and Germany was ratified, on July 2, 1921, the firm of M. Jebsen and Rhederei M. Jebsen, pursuant to the plebiscite ordered by Article 109 of the treaty of Versailles, became Danish subjects. The plebiscite provided that the zone in which Apenrade, the residence of the Danish firms are situated, should determine whether that zone should remain a part of Germany or become territory of Denmark. Under the plebiscite the zone referred to voted to return to Denmark and has now become incorporated as a part of the latter country.

There was only one other vessel, the *Martha Washington*, which occupied a position similar to that occupied by the *Carl Diederichsen* and the *Johanne*. This vessel, at the time of seizure, was owned by an Austrian corporation which subsequently became an Italian corporation under treaty provisions. I am advised that the appraised value fixed by the Naval Board of Survey on this vessel was $822,000. The vessel was sold, however, for $60,000, and it so happened that her original owners became the purchasers. It is clear that under the provisions of the bill, in its present form, that such owners will be made whole, since they now have possession of their vessel and will be entitled to recover the purchase price of $60,000.

The members of the committee are doubtless familiar with the facts in connection with this sale and I shall not discuss it in detail; however, I desire to invite the attention of the committee to the fact that the same generous consideration shown to the owners of the *Martha Washington* at the time of her sale has been denied to my clients. If, under the law, it was legal to sell the *Martha Washington* to its former owners for a sum paltry as to its value, then I submit it was legal to return to the owners of the *Carl Diederichsen* and the *Johanne* the purchase price of their vessels.

The bill in its present form places my clients on a parity with German nationals whose awards are to be paid in installments covering a period of years. This, I submit, is unfair and inequitable, since the property of German nationals was pledged by the German Government to the United States Government to indemnify claimants of the United States. The treaty pledging this property was ratified July 2, 1921. My clients, having changed from German to Danish nationals, could not be bound by this treaty.

Congress, to meet the situation and to do equity to those who had ceased to be German subjects by virtue of treaty provisions and whose property had been seized on land, on June 5, 1920, passed an amendment to the trading with the enemy act, returning their property.

The bill now before the committee, if passed, would deny to my clients the rights granted them by this amendment, in that it would deprive them of the sale price of their two vessels, since the bill provides that the award shall be based upon the value of the vessels prior to the time exclusive possession was taken under the authority of the joint resolution and its condition at such time. If the United States Government can justify itself in retaining the excess of the sale price over the appraised value of the vessels, it can justly retain the whole amount of the sale price, which will make it occupy the position of having confiscated the property of the nationals of a neutral country. This not only would be unfair, inequitable, and discriminatory, in view of the amendment to the trading with the enemy act referred to, but it would seem to be an affront to a nation (Denmark) which remained neutral during the World War.

Th bill also specifies that suits or proceedings now pending against the United States for compensation shall be dismissed before any award or tentative award shall be made. This provision of the bill is likewise unfair and inequitable, since it denies the Danish nationals referred to a judicial determination of their cases, which are now pending in the Supreme Court of the United States and set for argument on March 5 next, and forces them to accept the award of the arbiter, which, under the provisions of the bill, would deprive the Danish nationals of the full compensation to which they are entitled (the sale price of their vessels).

It is my understanding that the State department has forwarded to the chairman of the committee its recommendations respecting the rights of the Danish claimants herein referred to.

If the amendment now offered is adopted, it is believed that the Danish nationals will be given a position in the bill to the end that the relief sought will be accorded them.

Proposed amendment to H. R. 7201, entitled "A bill to provide for the settlement of certain claims of American nationals against Germany and of German nationals against the United States, for the ultimate return of all property of German nationals held by the Alien Property Custodian, and for the equitable apportionment among all claimants of certain available funds."

At page 7, and immediately succeeding subdivision (b) (1) of section 4, insert the following subdivision:

"SEC. 4 (b) (1-a). In the case of any such vessel so taken and that may have been sold by any lawful agency of the United States, and that may have become ipso facto or through exercise of option a subject, citizen, or national of any nation or State or free city other than Germany, or Austria, or Hungary, or Austria-Hungary under the provisions of any treaty by and between any of the enemy and allied powers prior to the date of the sale thereof, then the amount of compensation payable to the owners thereof in lawful money of the United States shall be based upon the actual sale price, plus 5 per cent per annum from July 2, 1921; and the same shall be awarded in full and so paid by the Secretary of the Treasury out of the funds to be hereinafter made available for the purpose of this act. The provisions of this subsection shall in no way be considered as governing the awards and payments to claimants other than those specified by this subsection."

The CHAIRMAN. My attention has also been called to the fact that there is a letter from the Secretary of State with reference to the same matter, and I will ask the reporter to also put that letter in the record at this point.

(The letter and attached papers are as follows:)

DEPARTMENT OF STATE,
Washington, January 24, 1928.

DEAR SENATOR SMOOT: I beg to transmit herewith copy of a note of January 23, 1928, from the Danish Minister, in which he urges that the pending alien property bill be amended for the purpose of protecting the interests of certain Danish citizens. I also transmit copy of a memorandum submitted by the Danish Legation in support of the desired amendment.

I shall appreciate your presenting this matter to the Committee on Finance in order that due consideration may be given to the request of the Danish Minister.

Yours very sincerely,

(Signed) FRANK B. KELLOGG.

The honorable REED SMOOT,
United States Senate.

ROYAL DANISH LEGATION,
Washington, D. C., January 23, 1928.

SIR: I beg to refer to previous correspondence concerning compensation for German merchant vessels seized by the United States during the World War and belonging to residents of North Slesvig, who later became citizens of Denmark, lastly your note of April 20, 1926, and the note from this legation of April, 23, 1926, and to state as follows:

As you no doubt are aware there is now before the United States Senate a bill on this subject (H. R. 7201), which was passed by the House on December 20, 1927. The provisions regarding merchant ships are to be found inter alias in section 4 (b), No. 1, and section 4 (e).

These provisions would, however, appear to have regard only to German nationals, as defined in section 17, and to have for purpose to indemnify such German nationals within certain limits and on certain conditions, on which point it is argued that whatever legal rights for compensation the original owners may have had, were wiped out by the provisions of the treaty of Versailles, adopted by the treaty of Berlin. See Report No. 17 of December 15, 1927, from the Committee on Ways and Means of the House, page 8.

In these circumstances I beg to suggest that these Danish citizens were not bound by the Treaty of Berlin, and that full and unqualified compensation should be granted to them, and I venture to ask you to be so good as to submit this suggestion to the committee of the Senate. This committee appears to be

about ready to report the bill, and I would be greatly obliged to you if my request could be communicated to the committee as soon as convenient, in order that an amendment covering the aforesaid Danish interests might be proposed and passed, if deemed proper.

For your convenience I beg to inclose copies of the bill and report in question.

I have the honor to be, sir, with the highest consideration, your most obedient and humble servant,

C. BRUN.

The honorable FRANK B. KELLOGG,
Secretary of State, Department of State, Washington, D. C.

MEMORANDUM IN SUPPORT OF PROPOSED AMENDMENT TO H. R. 7201, NOW PENDING BEFORE THE SENATE FINANCE COMMITTEE

Under the joint resolution of Congress of May 12, 1917, 106 vessels were seized by the United States Government, two of which, the *Carl Diederichsen* and the *Johanne*, were owned and operated by the firm of M. Jebsen & Rhederi M. Jebsen, a joint stock company incorporated under the laws of Schleswig-Holstein, Germany. These two vessels were leased and chartered for trading purposes on December 12, 1917, by the Shipping Board to the Philippine Government until June 7, 1920, when they were sold to foreign corporations for the respective sums of $200,000 and $174.60.

Before these vessels were sold, however, and before the peace treaty between the United States and Germany was ratified, on July 2, 1921, the firm of M. Jebsen & Rhederi M. Jebsen became Danish subjects pursuant to the plebiscite ordered by article 109 of the treaty of Versailles, which plebiscite provided that the zone in which Apenrade (the residence of the firm of M. Jebsen & Rhederi M. Jebsen) is situated should determine whether that zone should remain a part of Germany or become territory of Denmark. Under such plebiscite the zone referred to voted to return to Denmark and has now become incorporated as a part of the latter country.

To meet this situation, and to do equity to those who ceased to be German subjects by virtue of treaty provisions, and whose property had been seized on land, the United States Congress, by amendment of June 5, 1920, to the trading with the enemy act, provided as follows:

"*Provided*, That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such a citizen or subject at the time first specified in this subsection, if he has become or shall become ipso facto or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria or Hungary (first) under the terms of such treaties of peace as have been or many be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following named powers: The British Empire, France, Italy and Japan (of the other part)."

It will thus be seen that the firm of M. Jebsen & Rhederi M. Jebsen, having acquired Danish nationality prior to the ratification of the treaty between the United States and Germany of 1921, are no longer to be treated or considered as German citizens.

The bill, as passed by the House of Representatives and now pending before the Senate Fiance Committee, does not afford the Danish Nationals referred to the complete relief to which they are entitled, but places them on a parity with German nationals whose awards are to be paid in installments covering a period of years.

If passed, the bill would deny to the Danish nationals referred to the sale price of their two vessels, as it provides that the award will be based upon the value of the vessel prior to the time exclusive possession was taken under the authority of the joint resolution and its condition at such time, taking into consideration the fact that such owner could not use or permit the use of such vessel, or charter, or sell or otherwise dispose of such vessel prior to the termination of the war, July 2, 1921. The vessels in question were sold for $200,000 and $174,600, respectively, as heretofore stated, and surely the United States Government would not wish to profit by the sale transaction to the extent of the excess of the sale price over an award to be made in keeping with the section referred to in the amendment. If the United States Government can justify retaining the excess, then

it can justly retain the whole sale price, which will make it occupy the position of having confiscated the property of the nationals of a neutral nation.

The bill also makes it a condition precedent that suits or proceedings now pending against the United States for compensation shall be dismissed before any award or tentative award shall be made. This provision of the bill is likewise unfair and inequitable, since it denies to the Danish nationals referred to a judicial determination of their cases, which are now pending in the Supreme Court of the United States and set for argument on March 5 next, and forces them to accept the award of the arbiter.

It is believed that the proposed amendment, hereto attached, will give to the Danish nationals the relief sought, and to which they are entitled, and it is respectfully requested that this amendment be recommended to the Finance committee for adoption.

Proposed amendment to H. R. 7201, entitled: "A bill to provide for the settlement of certain claims of American nationals against Germany and of German nationals against the United States, for the ultimate return of all property of German nationals held by the Alien Property Custodian, and for the equitable apportionment among all claimants of certain available funds."

At page 7, and immediately succeeding subdivision (b) (1) of section 4, insert the following subdivision:

"SEC. 4. (b) (1-a) In the case of any such vessel so taken and that may have been sold by any lawful agency of the United States, and that may have become ipso facto or through exercise of option a subject, citizen or national of any nation or State or free city other than Germany, or Austria, or Hungary, or Austria-Hungary, under the provisions of any treaty by and between any of the enemy and allied powers prior to the date of the sale thereof, then the amount of compensation payable to the owners thereof in lawful money of the United States shall be based upon the actual sale price, plus 5 per cent per annum from July 2, 1921; and the same shall be awarded in full and so paid by the Secretary of the Treasury out of the funds to be hereinafter made avilable for the purpose of this act. The provisions of this subsection shall in no way be considered as governing the awards and payments to claimants other than those specified by this subsection."

The CHAIRMAN. Judge Parker, you began your statement yesterday. I wish that you would continue with it now where you left off last evening.

STATEMENT OF HON. EDWIN B. PARKER—Resumed

Mr. PARKER. Mr. Chairman, when the committee adjourned yesterday afternoon some question had been made with reference to the expediting of claims. I would like at this point to bear testimony to the activity and efficient handling of claims before the commission by both the American agent and his counsel and the German agent and his counsel. The cooperation between these two agents in getting the claims before the commission, contesting them to the best of their ability as advocates when they come before the commission but cooperating in expediting the work, has done more than any other one thing, in my judgment, to enable the commission to dispose of some 12,300 claims to this date, leaving only 216 yet to be disposed of.

The CHAIRMAN. Two hundred and sixteen claims?

Mr. PARKER. Only 216 claims that are still before the commission to be disposed of.

The CHAIRMAN. I thought there were more than that.

Mr. PARKER. No; 216.

Senator HARRISON. You estimate that you will finish them in how long a time?

Mr. PARKER. It is difficult to make an estimate, but I hope and believe by midsummer.

Among those claims which remain are the two major sabotage claims, with subsidiary claims presented by the insurance companies, growing out of the Black Tom explosion and the Canadian Car & Foundry Co. explosion. There are some 66 insurance claims in each.

Then there are the two very large and important patent claims of the Submarine Signal Co. and the Electric Boat Co., which involve very large amounts and are important. In one of those patent claims the German Government admits liability as to one out of three counts and contests the other two counts. In the other case they deny liability, and it will be vigorously contested. There are extremely important and technical questions involved in both claims.

The CHAIRMAN. And when one case is decided it may decide a great number of the same class of claims?

Mr. PARKER. That is true of the sabotage claims. One decision in each of the two major sabotage claims will practically dispose of some 60 subsidiary claims.

Senator CURTIS. Then you think you can dispose of all of them within six months?

Mr. PARKER. I should think so, Senator.

The CHAIRMAN. And they amount to about $20,000,000?

Mr. PARKER. Approximately. The American agent has estimated—he is here and can speak for himself—that, weighing the claims and giving them the most favorable consideration from the viewpoint of the claimants, the maximum recovery in all the claims can not exceed $22,000,000 in principal.

Senator HARRISON. That makes the withholding of any funds or the withholding of legislation unimportant?

Mr. PARKER. I should think so.

Senator HARRISON. From the standpoint of the claimants?

Mr. PARKER. I should think so.

The CHAIRMAN. Do you think, Judge Parker, that the Boles amendment is necessary here, from what you know of the situation?

Mr. PARKER. I should say no. But so far as I can see it will do no harm, because we expect to get through and will get through, as I said yesterday, before the machinery can be set up for the return of any of this alien property.

Senator MCLEAN. The amendment might spur the agents on to dispose of their cases.

Mr. PARKER. Well, if it had any effect it would have that effect, Senator; and yet, Senator, Germany has everything to gain and nothing to lose by expediting the matter. I can think of no possible reason which would impel them to hold back the finishing of this job.

The CHAIRMAN. If they did, they would be out their money just that much longer.

Mr. PARKER. Yes, sir.

Now, it occurs to me, Mr. Chairman, that I can say but little which will be helpful to this committee at this time in the consideration of the problems you have before you. I shall be very glad to be of any possible assistance to the committee in the consideration of any provision of this bill. I have attended several of the hearings and have listened to the statements of some of the witnesses.

In the report of the House committee on this bill, at page 23, is a summary of the statistics with reference to the Mixed Claims Commission's awards. You are all familiar with that. Since that summary was compiled, when the bill was pending before the House committee, the commission has disposed of 52 cases. The awards in those cases, with interest to January 1, 1928, aggregate $5,180,599.52. So that, to bring the report right down to this morning, the total amount awarded to claimants to date, including interest to January 1, 1928, is $169,928,162.53.

The CHAIRMAN. How much is that, Judge Parker?

Mr. PARKER. One hundred and fifty-nine million nine hundred and twenty-eight thousand-odd dollars.

Senator FESS. How does that compare, Judge, with the amount that was set up in the claims that have been filed with the commission?

Mr. PARKER. I beg your pardon, Senator?

Senator FESS. How does that compare with the amount demanded?

Mr. PARKER. Well, it is very considerably less than the amount demanded.

Senator FESS. What I was going to get at is whether the statement a while ago of some $22,000,000 more might be the maximum or whether it might be less than that.

Mr. PARKER. It probably will be less than that.

Senator FESS. That is what I mean.

Mr. PARKER. But, obviously, it is difficult to estimate the awards in such cases as the sabotage cases, where there may be none and there may be large awards, but that figure is safe as a maximum.

Senator FESS. I wanted to ask also whether from the standpoint of the Mixed Claims Commission there is any reason why we should not expedite this legislation. Is there any reason why we should not?

Mr. PARKER. There is every reason, from my point of view, why you should expedite it.

Senator FESS. That is what I wanted to know.

Mr. PARKER. It is in the interest of both nations and in the interest of both groups of claimants that this controversial matter which has been pending so long be very speedily disposed of.

Senator FESS. Then our inability to reach earlier legislation—it has been here a long while—is not due to any necessity on the part of the Mixed Claims Commission for us to wait.

Mr. PARKER. On the contrary.

Senator FESS. That is especially what I wanted to know.

Senator HARRISON. I do not think it has ever been stated or intimated that the legislation has been held up because of the Mixed Claims Commission.

Senator CURTIS. No.

Senator HARRISON. I have heard nothing but the highest praise for the Mixed Claims Commission.

Mr. PARKER. That is very gratifying, Senator. We try to deserve it, but it is, nevertheless, very gratifying to hear you say it.

So the total awards to date entered by the commission (including the American Government's claims) with interest to January 1, 1928, amount to $221,166,523.97.

As I said a while ago, there are only 216 cases to be disposed of, out of a total of approximately 12,500 cases.

The CHAIRMAN. If that is all you have to say in relation to those cases, I would like to ask you whether in your opinion it is necessary to have legislation in order to make complete settlement with the Austrian and Hungarian claimants?

Mr. PARKER. Mr. Chairman, that is an entirely different story. May I, in order to make myself understood, in just a few words explain to you the status of the claims of the United States on behalf of its nationals against Austria and against Hungary and the status of the Austrian and Hungarian property in the hands of the Alien Property Custodian?

The CHAIRMAN. We would be glad to have you do so.

Mr. PARKER. The treaty of Berlin, entered into between the United States and Germany in 1921, dealt with German claims only, that is, the claims of the United States and its nationals against Germany. Separate treaties were entered into in the same year between the United States and Austria and between the United States and Hungary. The present Government of Austria and the present Government of Hungary represent entirely different States from the old Austrian Empire and the old Kingdom of Hungary.

The United States was at war with the Imperial and Royal Austro-Hungarian Government, the dual monarchy. That was destroyed by the war and the treaties that followed. The Austrian Empire, which formed a constituent part of the Austro-Hungarian dual monarchy, no longer exists. The then Kingdom of Hungary, which formed an integral part of the Austro-Hungarian monarchy, no longer exists. Out of their territory has been carved the present Republic of Austria, with a very great deal of the territory of the old Austrian Empire ceded to other States, Czechoslovakia, Yugoslavia, and others. So with the Kingdom of Hungary. So that, while the United States entered into a treaty with Germany restoring friendly relations, they entered into new treaties with the entirely new States of Austria and Hungary establishing friendly relations, because those States never had any international status prior to the war.

In entering into the treaties Austria and Hungary, instead of being treated jointly, had to be treated as separate States. Later, after those treaties, which were similar in their terms to the treaty of Berlin, an agreement was entered into in 1924 for the constituting of a tripartite claims commission to adjudicate the claims of the United States and its nationals against Austria and against Hungary. Let me say right here that there have been filed with the commission no claims of the Government of the United States against either Austria or Hungary; we have only claims of the nationals of the United States. Instead of setting up a commission with an American commissioner, an Austrian commissioner, an Hungarian commissioner and an umpire, the three Governments agreed upon a commission with a sole commissioner. I happen to be that commissioner. The agreement provided that all claims should be filed within one year. That year expired on January 25, 1927, one year ago. There were filed within that time 1,631 claims, a few of which contain a number of counts.

The CHAIRMAN. Against both of those Governments?

Mr. PARKER. Against Austria and Hungary. Some of them were filed jointly against Austria and Hungary; some against Austria

solely, and some against Hungary. There were 1,631 claims filed. There are practically 1,000 of those claims now disposed of.

Senator HARRISON. What were the amounts involved?

Mr. PARKER. Senator, it was very difficult to tell the amounts involved. The claims of some as first filed were extremely general in their terms, and until they are prepared and submitted it is impossible to tell the amounts really involved. I think I understand what you have in mind, and the American agent is here, and he can speak for himself; but he has, at the request of the Secretary of the Treasury, made estimates of the maximum amount of the awards that could be made in favor of the claimants under the decisions thus far made by the commissioner, announcing principles which would control the basis of the awards.

Senator HARRISON. Mr. Chairman, that matter is not coming up under this bill——

The CHAIRMAN (interposing). The reason I asked that now is that I am quite sure there is going to be an amendment offered to the bill including the Austro-Hungarian matters.

Senator WALSH of Massachusetts. Why should there not be such an amendment? Let us hear a discussion of it.

The CHAIRMAN. That is why I asked the judge to tell the committee something about it, so that we could have some basis for acting or for withholding action when we come to a discussion of this bill.

Senator KING. I think it is quite well to have a discussion of it. Germany is answerable for the claims against her and maybe for the guaranties of Austria and Hungary in amounts which shall be found in favor of American nationals against Austria and Hungary.

Senator HARRISON. What is the status of that matter in the House? I understood they were considering a separate bill. Have they passed it?

Mr. ALVORD. I think I can explain that, Senator. At the time this bill was under consideration before the Committee on Ways and Means of the House we did not have time to prepare the necessary amendments to take care of the Austro-Hungarian situation. That was explained to the Committee on Ways and Means. They decided they would report out the German bill and as soon as possible take up the Austro-Hungarian situation. Since the holidays I have prepared the first draft of a bill to take care of that. That was so complicated I did not feel like explaining it to the committee, so I asked the chairman's permission to prepare a set of amendments to fit into the German bill so that we would not have to repeat much of the matter that was in the German bill. I prepared that, and about a week ago Judge Green decided that it would not be necessary to take that up in the Committee on Ways and Means prior to action by the Senate.

Senator WALSH of Massachusetts. But act on it when it gets into conference?

The CHAIRMAN. Yes; it will go into conference, if we decide to have it go into the bill. That is the reason I wanted all the information we can have on the subject.

Senator WALSH of Massachusetts. The claimants want it in too. They are writing letters and are requesting it.

Senator FESS. We would not have to have additional hearings on it.

The CHAIRMAN. I do not think so.

Mr. ALVORD. I do not think so, Mr. Chairman. The matter is very simple.

Senator HARRISON. I think it can be taken care of in this.

Senator KING. Let us hear Judge Parker.

Mr. ALVORD. It can be dealt with here.

The CHAIRMAN. You may proceed, Judge.

Mr. PARKER. The American agent, in the light of the decisions of the commissioner thus far made, has made an estimate of the aggregate maximum amount of the awards that could be rendered against Austria as $2,853,000 and against Hungary as $914,000, including interest and assuming valorization. So you see it is a comparatively small matter.

Senator WALSH of Massachusetts. Judge Parker, have you received petitions since the expiration of the time for filing claims?

Mr. PARKER. For the filing of additional claims?

Senator WALSH of Massachusetts. Yes.

Mr. PARKER. They would come to the American agent, Mr. Bonynge, who is here. But my information is that with respect to the claims against Austria and Hungary only a comparatively few such petitions have been presented.

The CHAIRMAN. Mr. Bonynge, do you know how many?

Mr. BONYNGE. Several hundred.

Senator KING. And against Germany several thousand?

Mr. BONYNGE. Oh, yes; against Germany, we have several thousand.

Senator WALSH of Massachusetts. What recommendation do you make with reference to the extension of that time?

Mr. BONYNGE. There is no provision.

Senator WALSH of Massachusetts. What recommendation do you have to make?

Senator KING. Mr. Bonynge recommends against it. He wrote a strong letter to the Secretary of State on the subject, with which I disagree.

Mr. PARKER. As umpire I probably should not make any recommendation.

Senator WALSH of Massachusetts. I appreciate that. I think the people who have claims should not be shut out from filing their claims.

Senator KING. I think the State Department was rather unfair to the claimants.

Judge Parker, were those claims for loss of property or for injuries to persons?

Mr. PARKER. Against Austria and Hungary?

Senator KING. Against Austria and Hungary.

Mr. PARKER. In the administrative decisions the claims are classified into claims under the reparation provisions and claims under the economic clauses of the treaties. The claims for injury to persons and loss of property are included in the reparation claims. There are very few reparation claims. But the very great majority which have been filed are claims for debts owing to American nationals by Austrian nationals or Hungarian nationals or by the Government of Austria or the Government of Hungary on State bonds.

Senator McLEAN. The old government?

Mr. PARKER. No; not against the old government, but against the new government under the treaty, Senator. The treaty in each case is, to put it mildly, an extremely complicated document; more so than the treaty of Berlin, because here the dual monarchy of Austria and Hungary was dissolved and the obligations of that dual monarchy were apportioned among the succession states, from the time of the coming into effect of the treaty of St. Germain and the treaty of Trianon. There was a necessarily complicated refunding plan set up for state debts. The new Austria and new Hungary were treated as succession states with Czechoslovakia and Jugoslavia and others. With respect to bonds issued before the war that matured during the war or the coupons thereon that matured during the war, the new Austria and the new Hungary were made liable for them. State debts constitute a majority of the claims.

Now, a very large part of those appertain to war bonds which were purchased by American nationals, war bonds issued by Austria or Hungary, which were purchased by Americans before America entered the war. Therefore as to America they were pre-war obligations of Austria and Hungary. That was not true with respect to the Allied Powers of England, France, and Belgium, because they were in the war from the very beginning—Italy came in a little later. They were in the war from the beginning, and their nationals were not permitted by their own Government to invest in the war bonds of Austria and Hungary. A very large percentage of the claimants before the Tripartite Commission are naturalized Americans.

Senator McLEAN. Were those bonds purchased at the prevailing rate of exchange or on a gold basis?

Mr. PARKER. They were purchased at the prevailing rate of exchange before America entered the war.

The CHAIRMAN. They were in the war at the time they were purchased.

Mr. PARKER. Austria and Hungary were.

The CHAIRMAN. They were in the war.

Mr. PARKER. Yes; they were issued for that purpose; they were war bonds.

The CHAIRMAN. That was in 1914.

Mr. PARKER. It was in 1914 and later. While the United States declared a state of war to exist against Germany on April 6, 1917, America did not declare such a state of war against Austria-Hungary until December 7, 1917. So if it was an Austrian or Hungarian Government bond that was issued or sold before December 7, 1917, it was a pre-war bond, and with respect to the coupons from that bond which prior to the end of the war had matured, Austria or Hungary, as the case may be, is, under the treaty, liable for those coupons. Only the first Austrian Government War Loan bonds matured as to principal prior to the end of the war on July 2, 1921; none of the Hungarian Government War Loan bonds so matured. War bonds constitute a very large part of these claims. There are a number of claims respecting bonds issued before the beginning of the World War.

Now, another important and interesting fact is that so far as Austria and Hungary are concerned there was never a decree or a

law enacted in the nature of exceptional war measures or measures of transfer as against American nationals, as was the case in Germany. Germany was held liable for such damage, and awards for very large amounts have been entered by the Mixed Claims Commission against Germany because Germany, by her war measures, impounded or sequestered the property of or the debts owing to American nationals.

Senator KING. And neither Austria nor Hungary did that?

Mr. PARKER. They did not do it as against the United States. They did as against England and other Allied Powers.

Senator KING. But not as against the United States?

Mr. PARKER. No; not as against the United States.

Senator KING. Even after we declared war with Austria?

Mr. PARKER. No; that is, the Austrian and Hungarian agents have always contended that they never did, and the American agent and the American claimants have not been able so far to produce any evidence that they ever did.

Mr. BONYNGE. Judge, we have a case pending in which we think we have such evidence. It is the Frishman case. There is also the Guaranty Trust Co. case, which they have settled since that time. But we have raised the question that there are and were general decrees of that kind, and we claim that they applied to us. That is pending now, but it is not submitted, so you have not yet decided it.

Mr. PARKER. That is a case I shall have to consider when we get to it.

Senator WALSH of Massachusetts. You will reserve your judgment on that?

Mr. PARKER. Yes, sir.

In order to have some rule for the consideration of these cases, the commissioner has handed down what is designated as Administrative Decision No. II. I will try to state it in just as few words and as simply as a complicated proposition can be stated.

The commissioner held that a private obligation payable in kronen was a krone obligation; that under the treaty, as the United States did not adopt the clearing-office system for the reciprocal settlement of debts, the only direct basis for declaring that obligation a dollar obligation, to valorize it on a pre-war basis, must rest on some act of Austria; that, in the absence of proof that Austria as a Government took some action operating on that obligation to the prejudice of the American holder, it would remain a krone obligation. But if the United States or the claimant could prove that by decree or otherwise Austria had taken any action to the prejudice of the holder of that krone obligation, then, under the terms of the treaty, the holder of the obligation was entitled to compensation for that act of the Austrian Government, and in determining the amount of that compensation the pre-war rate of exchange would apply to convert the krone obligation into an obligation stated in the terms of American currency. But the burden was upon the American Government or the American claimant to prove that such action was taken by Austria. It is only on that basis that the Government of Austria can be held directly liable for the debts of her nationals.

The CHAIRMAN. I think that is right.

Senator KING. The declaration of war between the United States and the Austro-Hungarian Empire did not ipso facto create such a

situation as would authorize the valorization of the obligations into terms of dollars?

Mr. PARKER. No. The rule in Austria-Hungary and in most of the European countries is different from the rule in England and in the United States. Here the existence of a state of war makes commerce between the belligerent nationals impossible. There it is not so. There was on the part of Austro-Hungary no obstacle to the free intercourse of its nationals with their belligerents.

Senator KING. I take it, Judge Parker, from your statement as to the small amount that many of these cases which are presented, out of the 2,000 against Austro-Hungary, were put in categories in which there was no obligation at all?

Mr. PARKER. A very great many of them. A very great many of them, when they came to be analyzed were claims, Senator, on bonds that had not matured; the principal amount of the bond had not matured, and the coupons presented had not matured during the war. Clearly, under the treaty, if they had otherwise fallen under the treaty, they were not obligations for which Austria or Hungary would be liable. Many others were bonds that were purchased after America entered the war, post-war transactions. They were simply speculative investments. The purchaser simply picked the wrong horse, that is all.

The CHAIRMAN. The same as buying marks.

Mr. PARKER. Yes, sir.

Senator WALSH of Massachusetts. Mr. Chairman, is it necessary to go into these details?

The CHAIRMAN. I think the Judge is nearly through with this matter.

Mr. PARKER. Yes.

Senator KING. I would like to ask one question, if I may, Judge. I confess that I have not been satisfied—I do not know that I could have reached a different conclusion—in the light of the many letters that have been written to me, and the many statements that have been made to me by the claimants that many of those claimants have been denied relief. For instance, a man who purchased bonds issued by the Hamburg Free City, bonds that were purchased right after the war, or after the Versailles treaty——

Mr. PARKER (interposing). After the armistice?

Senator KING. Yes; after the armistice. Under the decisions he gets nothing. Those were issued by the Hamburg Free City and guaranteed by the German Government. Thousands of those bonds, they contend, are not due. Many persons in good faith purchased bonds which had no date of maturity, the German Government holding the right to determine when they would pay the obligation. I am informed that it is held by the Mixed Claims Commission that, being indefinite as to the date of maturity and Germany not having elected, under the discretion which she had, to declare them matured, they are not due and the American bondholder is wiped out.

Mr. PARKER. Senator, the Mixed Claims Commission did not write the treaty of Berlin. It is a judicial tribunal. The treaty of Berlin is its charter. It construes it and applies it. Under the treaty of Berlin no provision is made for any such claim against Germany unless the bonds or coupons purchased before the United States entered the war fell due during the war or unless the German

Government did some act to damage the American holder of those obligations. Now, if the German Government had seized those bonds, if the Treuhaender had taken control and physical possession of them, so that the holder of those bonds could not sell them and realize on them, that, the commission has held, would give the owner of those bonds a claim against Germany to the extent of his damage. But if he held those bonds which had no date of maturity, which were not matured obligations, and no act of Germany operated during the war on his bonds, on what theory could Germany be held liable for them?

But that is not for the commission to say. The commission has said and only said that the treaty of Berlin makes no provision for the payment of any obligation, except an obligation which matured during the war, on which, because of Germany's act, the American creditor was not able to collect his money.

Senator KING. Any act of Germany then after the war you would hold, no matter how damaging it may have been to those securities, was not such an act as would give you cognizance to award damages.

Mr. PARKER. No, sir; the treaty of Berlin simply dealt with what occurred during the war.

Senator MCLEAN. You mean any legislative act?

Senator KING. Well, or an executive act. I had in mind, for instance, her act in degrading her currency, which I think she deliberately did in conspiracy with a number of German bankers and others.

Senator MCLEAN. Those were bought after the war?

Senator KING. I am speaking about after the war, Senator, in my last question. Many bonds were held in the United States by German nationals which were purchased prior to 1914, and I am told that they are not paid upon the theory that the bonds do not state a date of maturity.

Senator MCLEAN. Well, they are paid in marks.

Senator WALSH of Massachusetts. Senator, on what other theory than that explained here would you be obliged to settle the claims of Americans?

Senator KING. Of course, the commission is bound by the treaty of Berlin, with such provisions as were imported into it from the Versailles treaty; and that would, of course, constitute a part of the treaty of Berlin.

Mr. PARKER. May I read just a few sentences from the opinion of Mr. Justice Holmes, of the Supreme Court of the United States, in the Humphrey case? This was decided November 23, 1926. An effort was made to recover on a mark obligation in a suit against the Alien Property Custodian, who had funds in his hands seized from the debtor. The Supreme Court said:

> An obligation in terms of the currency of a country takes the risk of currency fluctuations and whether creditor or debtor profits by the change the law takes no account of it. Obviously in fact a dollar or a mark may have different values at different times but to the law that establishes it it is always the same. If the debt had been due here and the value of dollars had dropped before suit was brought the plaintiff could recover no more dollars on that account. A foreign debtor should be no worse off.

Now, that very aptly illustrates the position of such a case in an an arbitral tribunal. Humphrey had a deposit in a German bank. The Alien Property Custodian had funds of that German bank.

Humphrey brought suit against the Alien Property Custodian and the German bank. The Supreme Court of the United States held that that was a mark debt and all he could recover was marks as against that bank. The German Government was not a party to this suit.

Senator KING. We could do this——

Mr. PARKER. Let me follow one step further.

Senator KING. Yes.

Mr. PARKER. Humphrey had a claim before the Mixed Claims Commission on the deposit in that bank.

The CHAIRMAN. The same transaction?

Mr. PARKER. The same transaction. He lost before the Supreme Court of the United States when proceeding under the American statute. Then he pursued his claim under the treaty before the Mixed Claims Commission and got an award translating his marks into dollars at 16 cents to the mark. Why? Because his claim before the Mixed Claims Commission was not against the Alien Property Custodian, was not against the German bank, but was against the German Government, and he proved a debt for which the German Government is liable under the treaty and was given an award on the basis of 16 cents to the mark.

That aptly illustrates the difference between an action against the bank and an action against the Government. The German bank obligation was expressed in marks. That was its only obligation. The German bank was not obligated to pay him in dollars, but the German Government was, because the German Government had assumed primary liability for such debts and agreed to their conversion into American currency.

Senator KING. Judge, I have had hundreds of letters in the past three months calling my attention to these claims which American nationals have against these banks or banking houses, and I thought it my duty to challenge attention to some of them. For instance, I received a letter last week in which it was stated that the writer had purchased bonds and securities which had been left in Germany. When the war came on he could not get in contact with the banks or the trustees of the bonds or the bond houses, or whoever were the depositories, for the purpose of getting his bonds out of Germany. And the claim is that he had been denied any award for the value of his bonds.

Senator WALSH of Massachusetts. Were they lost or destroyed?

Senator KING. I do not know whether they were or not.

Senator WALSH of Massachusetts. They have not gotten possession of them?

Senator KING. They have not gotten possession of them.

The CHAIRMAN. If they were purchased by a bank, they may be in safe-deposit boxes.

Senator KING. The bank purchased the bonds for them.

The CHAIRMAN. Possibly they are in safe-deposit boxes.

Senator KING. I fancy in many cases they bought them and left them there.

The CHAIRMAN. Then they would be in a safety-deposit box.

Senator KING. I am not so sure about that. I am told the bank had a large fund, that it would buy steel bonds and other securities for a great many Americans, and take the certificates in their own

name, and allocate them only when called for. They were not in the name of the vendee at all.

Mr. PARKER. There are many cases like this, Senator—I will not unduly protract this discussion. Take such a house as Zimmerman & Forshay, for instance. They would buy for their customers. They would buy the bonds in Berlin with the agreement that they were to be deposited in Germany until the expiration of the war. The bonds did not mature during the war. They were bought with the understanding that they should remain in Germany during the war. Where the German Government did nothing and took no act to operate on those bonds to the detriment of the owner, why should the German Government be liable?

Senator KING. Suppose they bought American bonds and stocks and held them in Germany and there was no depreciation, you would make an award for those?

Mr. PARKER. They would be returned.

Senator KING. But they did not get them back.

The CHAIRMAN. But nobody else can get the money.

Senator KING. No; but the bank used those securities itself, I am told.

Mr. BONYNGE. There is absolutely no such case as that before the commission.

Mr. PARKER. We have been diverted from the Austro-Hungarian case, and I think I can complete that statement in just a few words.

The Supreme Court of the United States on May 16, 1927, decided another case, Zimmerman et al. *v.* Sutherland and the Wiener Bank-Verein, an Austrian bank. That was the case to which one of the witnesses referred the other day, saying that Mr. Hughes was employed to appear before the Supreme Court and argue for a construction of his own treaty and the Supreme Court did not take his view of it. That case was brought against the Alien Property Custodian and the Vienna Bank to subject property of the bank held by the custodian to the payment of the claimant's debt expressed in kronen. There the Supreme Court of the United States in an unanimous opinion held as follows:

> The only primary obligation was that created by the law of Austria-Hungary and if by reason of an attachment of property or otherwise the courts of the United States also gave a remedy the only thing that they could do with justice was to enforce the obligation as it stood, not to substitute something else that seemed to them about fair.

In disposing of the contention that this suit could be maintained under the act of the Congress of the United States designated the "Trading with the enemy act" the court held: "That act did not turn the Austrian into an American debt and impose a new and different obligation upon the Austrian Bank."

Now, that is exactly the position that the tripartite commissioner had taken. But the question before the commission was: Did the treaty of Vienna or the treaty of Budapest, with Austria and Hungary, respectively, give a right to the American national that he did not before have? The commissioner held that if the Government of Austria or Hungary had done any act to the prejudice of the holder of those debts it must respond to the extent of the damage done. If, on the other hand, nothing was done by Austria or Hungary to the prejudice of the holder of those obligations, it should not be held

liable for damages. In construing the treaty the commissioner held, in substance, this: That the property of Austria and of Hungary and their nationals in the hands of the Alien Property Custodian is to be disposed of as the Congress in its discretion might determine; in the event Congress should elect to apply that property to the payment of the debts owing to American nationals by Austrian nationals and Hungarian nationals falling within the terms of the treaties, then, under the terms of the treaties, in determining the amount to be paid the valorization provisions of the treaties, that is, the pre-war rates of exchange and of interest would apply; otherwise not.

The effect of this decision is this: In all cases where it can be shown that some act of Austria operated upon the debts owing to the American creditor to his detriment, the commission will determine the amount of the damage and enter a final award in dollars. In all other cases, where there is no such proof, the commission will enter what has been termed in the rules of procedure an interlocutory judgment, stating the obligation in terms of the kronen or other non-American currency in which the debt was contracted, and reserve final judgment, awaiting a decision by Congress as to whether or not it will apply this alien property to the payment of these debts. The responsibility is with Congress. If Congress does not elect to make such application final judgments will be entered in the contractual currency.

Senator KING. That is property which has been seized and is now in the hands of the Alien Property Custodian?

Mr. PARKER. Yes; it is property which had been seized and is now in the hands of the Alien Property Custodian.

Senator SHORTRIDGE. And you are entering those decrees?

Mr. PARKER. We are constantly entering those interlocutory judgments in terms of kronen or other foreign currency, because the commission can not determine whether or not they shall be valorized in terms of dollars.

The following excerpt from the Tripartite Claims Commission's Administrative Decision No. II explains the situation:

VALORIZATION OF DEBTS—INTEREST

In the absence of a treaty so stipulating, there is no warrant for requiring the payment in American currency at the pre-war rate of exchange of Austrian [Hungarian] public debts or debts of Austrian [Hungarian] nationals owing to American nationals which by their terms are payable in Austro-Hungarian or other non-American currency. A contract obligation of the Austrian [Hungarian] Government or of an Austrian [Hungarian] national to pay Austro-Hungarian kronen is exclusively a krone obligation and is unaffected either by the purchasing power of the krone in Austria [Hungary] or by the exchange value of the krone as measured by other currencies.

The commissioner rejects the contention put forward by the American agent that as paragraphs 4 and 14 of the annex to Section IV treat debts owing to American nationals by Austrian [Hungarian] nationals as within the provisions of that section, therefore the second clause of paragraph 14 requires the application of the provisions of Section III respecting currency and rates of exchange and interest to such debts. The commissioner holds that the mere fact that such debts may fall within the scope of or be dealt with in Section IV does not under any and all circumstances require the application to such debts of the provisions of Section III with respect to currency and rates of exchange and interest.

These provisions of Section III may be applied to debts only in carrying into effect such provisions of Section IV as deal with or operate upon debts. The

clause invoked by the American agent stipulates that "In the settlement of matters provided for in article 249 [232] between Austria [Hungary]" and the United States the provisions of Section III respecting currency and rates of exchange and interest shall apply. Article 249 [232] makes no provision for the direct settlement of debts as between nationals of Austria [Hungary] and those of the United States or as between the Government of Austria [Hungary] and American nationals. Such debts (except those subjected to war measures) are not dealt with by article 249 [232] save in those clauses providing in effect that the Government of the United States may charge or apply custodian property to their payment. Or, to state the proposition in another form, the provisions of article 249 [232] do not deal with the settlement of debts as between private parties or as between American nationals and the Government of Austria [Hungary] but deal only with State measures taken by the United States (or by Austria [Hungary]) in respect of such debts. Should the United States elect to exercise the power of charging custodian property with or applying it to the payment of such debts in accordance with the provisions of paragraph (*h*) (2) of article 249 [232] and paragraph 4 of the annex to Section IV—one of the "matters provided for in article 249 [232]"—then in the application by the Government of the United States as against the Government of Austria [Hungary] of these State measures to such debts the provisions of Section III with respect to currency and rates of exchange and interest will apply.

The treaty terms place the ultimate responsibility on the United States through its law-making power [1] to elect to apply or not to apply the custodian property to the payment of claims and debts of American nationals as defined therein. When the facts shall have been full developed by this commission, the debts ascertained and the claims adjudicated, this election may be made advisedly. Pending such election the treaty provides that the custodian property shall be retained by the United States subject to the disposition of its law-making power until such time as Austria [Hungary] shall have made suitable provision for the satisfaction of all claims of American nationals against it. What those claims are must be determined by this commission. What is suitable provision for their satisfaction must be determined by the law-making power of the United States. Should no other suitable provision be made by Austria [Hungary] for the satisfaction of American claims and debts, then the law-making power of the United States may at its election apply the proceeds of the liquidation of the custodian property to their payment in accordance with the provisions of paragraph (*h*) (2) of article 249 [232] and paragraph 4 of the annex to Section IV of the treaty, these being "matters provided for in article 249 [232]." In the event of such election—but only then—will the "debts" not subjected to war measures owing to American creditors by Austrian [Hungarian] debtors and by the Austrian [Hungarian] State payable in non-American currency be converted and stated for the purpose of payment in American currency at the pre-war rate of exchange, and the interest provisions of paragraph 22 of the annex to Section III will apply. The amount so applied will be a credit to Austria [Hungary] which will in turn compensate its nationals in respect of such application of the proceeds of the liquidation of their property (paragraph (*j*) of article 249 [232]).

METHOD OF PAYMENT

As heretofore noted, Section III of Part X of the treaties, providing a "method of payment" of private debts and State obligations defined therein "through the intervention of clearing offices," was not adopted by the United States and hence has no application as between the United States and its nationals on the one hand and Austria [Hungary] and its nationals on the other hand.

But the provisions of paragraph (*h*) (2) of article 249 [232] and of paragraph 4 of the annex to Section IV provide an alternate "method of payment" through the application by the Government of the United States of the custodian property to the payment of claims and debts of American nationals as defined therein. The Government of the United States by the terms of the treaties reserved and

[1] Paragraph (*h*) (2) of article 249 [232] provides that the custodian property "shall be subject to disposal by such Power [United States] in accordance with its laws and regulations." Section 5 of the [Knox-Porter] peace resolution adopted by the Congress of the United States and incorporated in the treaty of Vienna [Budapest] provides that the custodian property "shall be retained by the United States of America and no disposition thereof made except as shall have been heretofore or specifically hereafter shall be provided by law," etc.

it is expressly clothed with the power at its election [3] to make such application of the custodian property; but such election if made carries with it correlative burdens [3] and hence this alternate method of payment as well as the clearing office method is to some extent reciprocal.

MACHINERY FOR DETERMINING THE AMOUNT OF CLAIMS AND DEBTS

Eliminating those provisions of the treaties not adopted by the United States, the tripartite agreement in practical effect clothes the commissioner with the power and it is made his duty to adjudicate all claims presented by the Government of the United States on its own behalf or on behalf of its nationals against Austria [Hungary] or its nationals falling within the terms of the treaties, including (1) reparation claims arising under Part VIII, and (2) compensation claims for damage or injury falling within the terms of paragraph (*e*) of article 249 [232]; and, as arbitrator appointed in pursuance of paragraph 4 of the annex to Section IV of Part X of the treaties, to ascertain and assess in the contract currency the amount of debts not subjected to war measures in order that an account may be stated as a basis for the interested Governments taking measures looking to final settlement and that the law-making power of the United States may act advisedly in making final disposition of the custodian property.[4] In the discharge of the last-named function action by the Congress of the United States must be awaited before the commissioner can take final action with respect to the conversion of foreign into American currency, determine the rate of exchange applicable thereto, and the application, if any, of the interest provisions of paragraph 22 of the annex to Section III of Part X of the treaties.

RULES OF PROCEDURE

The commissioner prescribes the following rules governing debts and claims based on debts presented to the commissioner by the United States on behalf of American nationals:

I. All such cases will be grouped by the commissioner into two major classes designated class A and class B, respectively. Class A shall comprise those debts (or claims based thereon) found by the commissioner to have been subjected by Austria [Hungary] to exceptional war measures or measures of transfer. Class B shall comprise those debts (or claims based thereon) which the commissioner shall find were not subjected to or affected by any Austrian [Hungarian] State measures. Class B shall be subdivided into class B (1) and class B (2). Class B (1) shall comprise debts (or claims based thereon) impressed with American nationality throughout the period of American belligerency. Class B (2) shall comprise debts (or claims based thereon) which became impressed with American nationality by the naturalization of the claimant or otherwise through operation of law after December 6, 1917, but before July 2, 1921, and which remained to the latter date impressed with American nationality.

II. A final judgment will be entered by the commissioner in all class A cases for an amount stated in American currency compensating the American creditor for the damage or injury inflicted, with interest thereon at the rate of 5 per

[3] Paragraph (*h*) (2) of article 249 [232] and paragraph 4 of the annex to Section IV. It will be noted that these clauses of the treaties providing for this alternate method of payment are so drawn as to harmonize with the provisions of the American trading with the enemy act which reserved to the Congress of the United States the right to dispose of the custodian property and also with section 4 of the peace resolution incorporated in the treaties which reserved to the United States all rights "to which it is entitled by virtue of any act or acts of Congress," including the trading with the enemy act, and also with section 5 of the peace resolution incorporated in the treaties which provides that the custodian property "shall be retained by the United States of America and no disposition thereof made except as shall have been heretofore or specifically hereafter shall be provided by law until such time" as Austria and Hungary shall have respectively made suitable provision for the satisfaction of claims of American nationals against them.

[3] Should the United States elect to apply the custodian property to the payment of the claims and debts of American nationals it must to the extent of the amounts so applied credit Austria [Hungary] and the latter in turn is obligated to compensate its nationals in respect of the proceeds of the liquidation of their property so applied. Moreover, the United States to the extent it shall exercise the right reserved to it under paragraph (*b*) of article 249 [232] to retain and liquidate custodian property—one of the "matters provided for in article 249 [232]"—must, in the settlement of such liquidation, apply the provisions of Section III respecting currency and rates of exchange and interest. National Bank of Egypt *v.* German Government and Bank für Handel und Industrie, Anglo-German Mixed Arbitral Tribunal, V Dec. M. A. T. 26.

[4] See Administrative Decision No. I dealing with the functions and jurisdiction of the commission. There is thus combined in one tribunal functions which under the treaty of St. Germain [Trianon] and similar treaties between the allied powers and the central powers were allocated (1) the Reparation Commission, the mixed arbitral tribunals, and an arbitrator appointed in pursuance of paragraph 4 of the annex to Section IV of Part X.

cent per annum from the date of such infliction to the date of payment, such judgment to be in favor of the United States on behalf of the claimant against Austria [Hungary].

III. An interlocutory judgment will be entered by the commissioner in all class B cases reciting (a) the name and residence of the creditor, (b) the name and residence of the debtor, (c) the date the debt was incurred, (d) the date of its maturity, (e) the principal amount thereof, (f) the rate of interest stipulated, if any, and (g) the contract currency. The interlocutory judgment entered in all class B (2) cases shall also recite the date on which debts or claims based thereon became impressed with American nationality. Final judgment in all class B cases will be reserved by the commissioner pending further notice to the respective agents.

IV. All claims based upon debts owing by Austrian [Hungarian] nationals to American nationals shall be asserted against the Government of Austria [Hungary] and the Austrian [Hungarian] private debtor jointly. Thereupon the Austrian [Hungarian] agent shall cause notice of such claim to be given to the said Austrian [Hungarian] debtor and require such debtor to furnish the Austrian [Hungarian] agent within 45 days from the date of such notice with all necessary information and data for the proper defense, if any, of such claim.

This practice, in pursuance of which final judgments stated in terms of American currency will be entered by the commissioner in all cases save in class B cases, as above defined, and interlocutory judgments will be entered in all class B cases, will enable the Governments of the United States, of Austria, and of Hungary to act advisedly in adopting measures for the ultimate payment of such judgments—measures political rather than juridical in their nature; and will enable the law-making power of the United States to act advisedly in making final disposition of the custodian property as contemplated by section 5 of the peace resolution constituting a part of the treaties of Vienna and of Budapest.

Senator COUZENS. May I ask how you arrived at 16 cents as the value of the mark?

Mr. PARKER. That was a matter of compromise, Senator, between the Governments of the United States and Germany. The commission found that previous to April 6, 1917, the prevailing rate of exchange was 17.4 cents. Germany assumed primary obligation for such debts, and in compromise agreed that they might be valorized at 16 cents to the mark.

Senator SHORTRIDGE. Mr. Chairman, just before we adjourned yesterday I asked the judge regarding a question of procedure, and in order that I might clear the matter up in the minds of a great many people I would like to ask him just one or two questions touching the procedure before the commission, meaning the Mixed Claims Commission.

Mr. PARKER. Yes, Senator.

Senator SHORTRIDGE. You told us that you acquired jurisdiction upon the filing of the memorial or the petition setting forth the claim; is that right?

Mr. PARKER. Yes, sir.

Senator SHORTRIDGE. Will you, just in one-two-three order state the procedure up to the point that the matter is ready for submission to the commission. I am asking that for the record, because there has been more or less complaint and very likely unwarranted criticism growing out of the delay.

Mr. PARKER. There has been some delay, Senator.

The CHAIRMAN. Senator, that is already in the record.

Senator SHORTRIDGE. If it is in the record, I was not here, and I will not persist in the question.

The CHAIRMAN. Briefly you might go over it.

Mr. PARKER. Briefly, Senator, there are about 12,500 claims.

Senator SHORTRIDGE. Take one claim as illustrative of your procedure, Judge.

Mr. PARKER. The American agent does not file his memorial until he has his evidence in his hands. Frequently he has great difficulty in getting that evidence from the claimant.

Senator SHORTRIDGE. The claimant, of course, takes the initiative, does he not?

Mr. PARKER. He should; unfortunately he often does not, Senator. The American agent sometimes has great difficulty in getting information from the American claimant sufficient for him to prepare and present his case, because these are old transactions. But when the agent has that information in hand he prepares a memorial and the case is docketed. The German agent has 15 days within which to file his answer and supporting evidence.

SENATOR SHORTRIDGE. May that time be extended, under your rules?

Mr. PARKER. It may be extended on application. Frequently the German agent has difficulty in getting information from Germany. Then, if the case is further contested, the American agent files his brief at such time as may suit his convenience, with the rebuttal testimony. The German agent has 15 days within which to file his brief, and then the case is at issue unless the commission on application grants additional time to file additional documents.

Senator SHORTRIDGE. In other words, your rules do not fix the time within which these several steps must be taken?

Mr. PARKER. Yes, they do.

Senator SHORTRIDGE. You may extend that time on good cause shown?

Mr. PARKER. Just as any other court may, on good cause shown.

Senator COUZENS. Following up Senator Shortridge's question, the initiative must be taken by the American agent on behalf of the American claimant first, must it not?

Mr. PARKER. Yes, sir. When it is considered, Senator, that out of about 12,500 claims all but 216 have been disposed of, you can readily understand that there has not a great deal of grass grown under the feet of the American agent.

Senator SHORTRIDGE. You understand that in putting these questions I do not mean any criticism, but I have been asked these questions, which I have not been able to answer satisfactorily.

Mr. PARKER. I am very glad to give the information, Senator.

Senator COUZENS. May I ask if there is any limit of time placed by the American agent in which the American claimant may file his claim?

Mr. PARKER. The time in which he may file it?

Senator COUZENS. Yes.

Mr. PARKER. That was a rule that was not made by the American agent but was made by agreement between the two Governments at the time the agreement was entered into under which the Mixed Claims Commission was constituted. The Governments agreed that the claims must be filed within six months after the time of the first meeting of the commission; that is, that notices of the claims should be filed within six months from that time.

Senator COUZENS. When was that?

Mr. PARKER. The time expired on April 9, 1923. But that meant that only notice of the claim should be filed within that time, simply notice to the commission and to Germany that John Smith, say, had a claim on bonds for so-many marks or whatever it was. Now, the time within which the proof in support of that claim must be filed is not fixed. That rests with the claimant. I think, myself, that the agreement was weak on that point. But the commission has not felt that it had authority to put a limit on the time within which the claimant should file his proof. The commission has no jurisdiction over the case until the American agent has presented his memorial and docketed the case.

Mr. BONYNGE. May I interrupt on that matter for a minute? The commission did enter a rule that the American agent, after he had given notice of a claim to the commission and the German agent, and had requested the American claimant to submit proof in support thereof but which proof had not been submitted, might serve notice by registered mail upon the claimant that if he did not present his proof within the time specified in the notice, or give a satisfactory reason for failing to supply it within that time, the American agent could apply to the commission for a dismissal of that claim for lack of sufficient evidence to justify its further prosecution. Several hundred cases have been dismissed under that rule. In such cases I have given notice to the claimant that he must file his proof within two or three weeks or give a reason for failing to do so. If he does not file his proof or give any reason for his failure to do so, then I go before the commission and make proof that I have served the notice and ask for a dismissal of the claim. Under this procedure 1,134 have been dismissed. The claimants in those cases failed to furnish sufficient evidence for the prosecution of the claims and in most of them no response was received to the notice, indicating that the claimants were not interested in the prosecution of the claims.

Senator KING. Mr. Bonynge, may I ask one question?

Mr. BONYNGE. Yes, sir.

Senator KING. I have received two letters in which the claim was made that after this order of dismissal was entered—and they claim the circumstances were such that they prevented them from presenting the supplemental evidence required—they have asked for permission to reopen the case, and they have said or intimated that they have found no encouragement.

Mr. BONYNGE. On the contrary, there have been a number of cases reopened. The records disclose that there have been 29 of the cases reopened and only one, so far as I can recall, in which an application to reopen a case was denied. In that case the evidence submitted indicated that the claimants could not recover if the case was reopened for the reason that the claimants did not appear to be American citizens. When an application to reopen a case is made the first thing that is done is that the claimant is asked to show cause why he did not furnish the proof under the rule in time and at the same time to present evidence in support of the claim. If the claimant submits an explanation for his failure to supply the proof in time and at the same time furnishes the proof that is lacking within the time given, then the American agent goes before the commission and asks the commission to vacate the order of dismissal and to reinstate the case.

Senator KING. There is no inflexible rule and you have not been adamant in refusing to reopen cases where application has been made?

Mr. BONYNGE. No, sir. We have several cases on the calendar now which were dismissed and have been reopened.

Senator COUZENS. May I return again now to the original question, as to when the claimant would give the original notice of his claim?

Mr. BONYNGE. The American agent had to serve a notice upon the commission and the German agent within six months from the first meeting of the commission, which notice had to contain the name of the claimant, a statement of the nature of the claim, and the amount demanded.

Senator COUZENS. When was the meeting of the commission from which the six months dated?

Mr. BONYNGE. That was on October 9, 1922, and the six months expired on April 9, 1923.

Senator COUZENS. So that if an American claimant made no claim until after that date, his claim is not a lawful claim?

Mr. BONYNGE. It is not before the commission; they had no jurisdiction.

Senator SHORTRIDGE. What notice did the commission extend to the people scattered throughout our great territory with reference to the date of the first meeting of the commission when the time commenced to run?

Mr. BONYNGE. A great many of those claims—thousands of them—had already been lodged with the Secretary of State. So, as is frequently done in matters of that kind, it was published in the newspapers—not by a regular advertisement but by a notice in the newspapers of the country. And wherever the Secretary of State had a letter, even, about a claim, it was filed with the agent. Based on that letter, and such information as the American agent had, letters and telegrams were sent out to the claimants advising them to file their claims. Thousands of letters and telegrams were sent. We sent them to everybody we knew of who had any claim whatever.

Senator SHORTRIDGE. I have no doubt you did, but the six-month period commenced to run at the time of the first meeting of the commission?

Mr. BONYNGE. Exactly.

Senator SHORTRIDGE. And, of course, unless the prospective claimant had notice of that first meeting he did not know within what time he was obliged to file his claim.

Mr. BONYNGE. We are getting now, five years after this commission was organized, letters saying that they have never heard of this commission. Every statute of limitation will cut off some claimants.

Senator SHORTRIDGE. That is true.

Mr. BONYNGE. We are getting letters now saying that the writers have never heard of the commission, and they are asking the privilege of presenting their claims now.

Senator SHORTRIDGE. There is confusion in the public mind about the matter.

Senator KING. You have at least 6,000 applications now for filing claims?

Mr. BONYNGE. I do not have any. They are at the Department of State. I should say there are about 6,000, and most of them are speculative claims. Most of them are claims that have been solicited by lawyers, like Mr. McGowan, who have solicited people throughout the United States to allow them to file claims in their behalf and who have received a fee for filing them. Many of them are claims based on bonds that were purchased after the war, some as late as 1923 and 1924.

Senator COUZENS. May I ask if there were any claims settled on any other basis less than 16 cents to the mark?

Mr. BONYNGE. Not on a debt claim.

Senator COUZENS. On any claim?

Mr. BONYGNE. In reparation claims we do not have anything to do with valorization at all. The damages were awarded in dollars to the amount of damage as established by the proof. But on all debt claims they were fixed at 16 cents.

Senator MCLEAN. You did not begin these hearings until four years after the war closed, so the parties who had claims commenced to file their claims with the Secretary of State?

Mr. BONYNGE. Yes, sir.

Senator SHORTRIDGE. Are you able to tell us how many claims are barred by the six months' rule?

Mr. BONYNGE. I think there are about 6,000 claims with the Secretary of State, many of them of the nature I have just described.

Senator SHORTRIDGE. Are you able to tell us something of the amount of claims that are barred under this rule?

Mr. BONYNGE. I did sometime ago make a cursory examination of the late claims on file with the Secretary of State and made an estimate as to amount involved therein. I do not recall just now, but my best memory is that I figured it would be about $2,000,000 of claims that might possibly come within the jurisdiction of the commission had they been filed in time.

Senator SHORTRIDGE. Or have been barred by the six-months rule?

Mr. BONYNGE. Yes, sir. There are some meritorious claims there. There always will be some meritorious claims that are cut off by any statute of limitation.

Senator SHORTRIDGE. Yes.

Senator KING. You do not mean that they would aggregate $2,000,000?

Mr. BONYNGE. No, sir. I mean that of the total on file possibly claims aggregating $2,000,000 might possibly come within the jurisdiction of the commission, had they been filed in time and evidence submitted to support them.

Senator KING. They would aggregate many millions demanded?

Mr. BONYNGE. Yes, sir.

Senator HARRISON. Judge Parker, you said that these claims would be wound up by midsummer or within six months.

Mr. PARKER. Yes, sir.

Senator HARRISON. How about these Austrian and Hungarian claims; when can the commission wind them up?

Mr. PARKER. I think, Mr. Bonynge, we may reasonably hope to wind up these Austrian and Hungarian claims almost as soon as the German claims?

Mr. BONYNGE. I think there is some question about that. By the fall, however, I think we can wind up the German claims and the Austrian and Hungarian claims.

Senator HARRISON. Fall would be the limit, you think?

Mr. PARKER. Yes; both classes of claims, I think, can be wound up by fall.

The CHAIRMAN. If that is all, the committee will adjourn until this afternoon.

Mr. BONYNGE. I would like an opportunity, Mr. Chairman, at some time to express an opinion with reference to the Austrian and Hungarian claims.

The CHAIRMAN. We will have a session this afternoon, Mr. Bonynge, and you can have an opportunity then.

The committee will stand adjourned until this afternoon, if the judge is through.

Mr. PARKER. Yes, Mr. Chairman; I am through.

Senator COUZENS. Just one question, Mr. Chairman, before we adjourn. May I ask if any claims have been taken up by the commission on the speculative purchase of marks?

Mr. PARKER. On the speculative purchase of marks?

Senator COUZENS. Yes, sir.

Mr. PARKER. No.

Senator COUZENS. No claims of that kind have been taken up?

Mr. PARKER. No.

Senator COUZENS. That is all.

The CHAIRMAN. The committee will stand adjourned until this afternoon at 2 o'clock.

(Whereupon, at 11.45 o'clock a. m., the committee took a recess until 2 o'clock p. m. of the same day.)

AFTERNOON SESSION

The hearing was resumed at the expiration of the recess, in the hearing room of the Committee on Finance, Senator Reed Smoot, chairman, presiding.

The CHAIRMAN. The hour of 2 o'clock having arrived, the committee will come to order.

Judge Parker, I understand that it is desired in response to an inquiry from a Senator that you make a short statement in addition to what you said this morning?

Mr. PARKER. Just very briefly.

STATEMENT OF HON. EDWIN B. PARKER—Resumed

Mr. PARKER. Mr. Chairman, when one of the witnesses was making his statement before the committee he referred to the fact that the average awards of the Mixed Claims Commission with respect to the value of ships were very greatly in excess of the amount found by the Naval Board of Appraisal as the value of German vessels.

I have no opinion as to what the value of those German ships should be. I have not gone into that. It would not be proper for me to express any opinion. But I simply want to point out that that state-

ment was, though in all probability not intended to be, misleading. You can not establish the value of ships by averages when those values were fixed as to various dates when conditions were different.

The CHAIRMAN. Various conditions, too.

Mr. PARKER. Yes; and the conditions surrounding the character of the ships were different.

I am not criticizing that witness's statement; I am simply pointing out to the committee that it is dangerous to undertake to fix ship values by any rule-of-thumb methods or by any law of averages.

As a matter of fact, the Mixed Claims Commission had many claims before it involving the value of ships that were destroyed by German maritime warfare and its decisions constitute a considerable body of precedents with respect to the factors which should obtain in fixing ship values.

Senator BAYARD. So far as you know, Judge Parker, none of the ship values which your commission arrived at are similar in kind or character to the so-called German ships seized by the Government under the resolution of 1917?

Mr. PARKER. We did have involved in some of the claims before the commission ships somewhat similarly situated. The commission, after very careful studies and the collection of a great mass of testimony, was able to formulate some rules with respect to the factors which should enter into ship values that might be of interest to the committee.

Senator BAYARD. Did you, yourself, make any findings setting out any rules governing other than the ships which had appeared before your commission in the ship claims?

Mr. PARKER. Yes. In general terms we considered what factors should be taken into account in valuing any ships.

Senator BAYARD. Did you make a decision with regard to that which was afterwards printed?

Mr. PARKER. Yes.

Senator BAYARD. I am going to suggest, Mr. Chairman, that that be put into the record at this point.

Mr. PARKER. I do not want to take up your time on this.

The CHAIRMAN. You have no objection to its being printed?

Mr. PARKER. Not at all.

The CHAIRMAN. Will you furnish it for the record?

Mr. PARKER. I shall be very glad to.

The CHAIRMAN. I would like to have it done as soon as possible, because we want to close these hearings to-day, and then we want to have them printed.

Mr. PARKER. The most interesting questions arose in the charter claims, where ships were chartered by time charter. We had a number of those. Some foreign ships that were destroyed were at the time of their destruction covered by American charters. We held—and we went a long way in holding, but I am satisfied that it is entirely sound—that under the treaty the American charterer in certain circumstances had a right and an interest in the ship which was under charter to him; that the way to arrive at the value of that interest was to determine the value of the whole ship as a free ship and the extent, if any, to which that charter was an encumbrance on the ship, so that we could, if the charter was an encum-

brance, segregate the value of the owner's interest and the charterer's interest.

That worked both ways. Some American-owned ships were under foreign charters so favorable that the charter was an encumbrance on the ship.

Senator BAYARD. Each particular case came up on its own facts, so that you had to establish a principle that would govern all ships under A class, B class, and C class?

Mr. PARKER. That is the point I am making, that you could not lay down any one formula that could be applied to all ships under all conditions.

Let me, with reference to the charter claims, without stopping now to make any full statement, read from the opinion of the umpire as to the basis of those claims:

"Where a vessel was destroyed, Germany is obligated under the treaty of Berlin to pay the reasonable market value of the whole ship, including all estates or interests therein, provided they were on the requisite dates impressed with American nationality. In arriving at the market value of the whole ship, it is a free ship that is valued, and no account is taken of the independent market value of any charter that may exist thereon. Such charter may at a given time be an asset or a liability as determined by several factors, chief among which is the relation of the stipulated hire to the current market hire.

"When the whole ship destroyed was American-owned the aggregate amount of Germany's obligations for its loss is not affected by the existence of a charter or charters. But if any estate or interest in the ship was foreign-owned and the remainder American-owned, then Germany's obligations may be affected by the existence of a charter.

"If the vessel destroyed was American-owned and under a foreign charter, and (*a*) if the stipulated hire was less than the current market hire, then ordinarily the charter was an asset to the charterer and an encumbrance and burden on the ship, so that the American owner owned less than a free ship; but (*b*) if the stipulated hire was more than the current market hire, then the charter ordinarily was a liablity to the charterer, and an asset to the owner tending to increase the price which could have been obtained for the vessel by selling it on the market at the time of the loss, so that the American owner owned more than a free ship."

That was the general rule that the commission applied in dealing with those charter claims.

Senator BAYARD. Was that the *Housatonic* case?

Mr. PARKER. No; that was administrative decision No. VII, laying down general rules for the determining of factors which should enter into valuing of the ships. In a supplemental administrative decision, No. VII–A, this language was used by the umpire:

> The commission has had procured and laid before it much data dealing with the relative demand and supply of ships; charts purporting to reflect the market prices of vessels with the fluctuations in those prices graphically expressed; and tabulated statements of actual sales of bottoms made during periods prior to, throughout, and subsequent to the World War, compiled from evidence filed in numerous cases before the commission.

As a matter of fact, there were a number of those cases. I suppose practically every expert in the United States testified and gave lists

in support of his conclusions of actual sales of ships on different dates and actual charters.

From these it is possible to evolve a fairly accurate composite of tonnage values at any particular time during the war period. But at best this presents merely a composite picture, a general average, and while helpful as a general guide it can not safely be used as a standard of measurement without making particular adjustments for the actual conditions which obtained in each particular case. Ships are in a sense living things, created to move and to carry, not to be consumed. Food and fuel may be measured on a unit of value per ton, but a ship's value must be measured according to her ability to perform—to carry safely in volume with dispatch and economy.

Then the decision proceeds:

After a most painstaking examination by the commission it has been found impossible to lay down any fixed rule or mathematical formula for measuring in every case the extent and value of the charter encumbrance, if any such is found to exist. But under conditions usually obtaining in the cases before this commission this measure can be fairly taken by ascertaining the excess, if any, of the current charter hire at the time of loss over the hire stipulated for in the charter and extending such excess hire over that period (never exceeding the charter term) during which, under the law of averages, the ship under the conditions then existing would probably have survived and also probably have escaped requisition under circumstances working a frustration of the charter.

Then we go on to point out that the commission has collected affidavits of numerous shipping experts and compilations procured from different sources aggregating approximately 700 time charters actually entered into in the United States during the war period and fairly distributed throughout that period and about 1,500 trip, voyage, and net charters; a complete statement of all charters on foreign and American ships which were approved by the United States Shipping Board during the period of belligerency, etc.

That volume of data and information was arranged chronologically so that we could, given the date of the sinking of the ship, determine what transactions had actually taken place in the sale of ships or the chartering of ships as near the date of the sinking as possible, in order to arrive at the reasonable market value of the ship at that time. There was not any guesswork about valuing those ships.

Senator KING. Those that came before your commission?

Mr. PARKER. Yes, sir. I am not expressing any opinion at all about the value of the interned ships or ships that sought a port of refuge in America. As Senator Reed pointed out, they were technically not interned ships.

I pointed out that the statement of averages per ton is misleading. Averages do not mean anything as applied to ships. You must take into account numerous factors, their availability for use, their age, and so forth.

In the course of that opinion the umpire said:

There are many factors which must be taken into account in arriving at the fair market value of any vessel at any particular time and place, and the weighted value of each factor varies, of course, from time to time as the conditions change. This is especially true with respect to the abnormal and kaleidoscopic conditions created by the World War, as a result of which the trade in which a vessel was engaged, or the particular seas to which her use was restricted, or her nationality (as affecting the extent of her exposure to regulation, requisition, or destruction), considered in connection with the laws of the nation to which she was subject, may, singly or together, have had an influence more or less controlling in determining her market value, although in normal times they would have been much less important.

Normally the cost of a vessel, her age and physical condition, and the cost of replacement are important factors in arriving at her market value. Some of the shipping experts whose testimony has been presented to the commission go so far as to declare that during the war period those factors were without influence in determining the value of a ship, which was measured solely by her availability for use. While the evidence before the commission of actual sales made and of charters actually entered into, involving bottoms of varying ages and classes, does not justify those extreme statements, nevertheless there were times during the war period when the demands for tonnage so far exceeded the available supply, and those demands were so imperative, that factors normally controlling were so far outweighed by the consideration of availability for use as to become comparatively insignificant. But even that condition was not constant, and conditions existing at the particular time must be looked to in determining the relative importance of the various elements obtaining in each case.

Speaking generally, the factors which must be taken into account during the war period in fixing the value of the whole ship, including all estates therein, are availability for use, cargo capacity, nationality of registry and of ownership, nationality of charterer, class, original and reproduction costs, speed, age, draft, and adaptability for particular trades.

Senator BAYARD. You first undertook to regulate the status of the ship at the time of her seizure or destruction?

Mr. PARKER. Yes, sir.

In rejecting the testimony of those experts who said that availability for use was the sole test the umpire points out, for instance, that in the agreement for compensating Dutch ship owners by the United States and Great Britain age was a material factor in fixing ship values. Bottoms up to 10 years of age were valued at $237.50, 10 to 30 years of age at $190, 30 years and over at $167.25 per dead-weight ton. You see, there is a very material difference in age there.

In February, 1918, the values for war-risk insurance on steamers 10 years old or less plying between United Kingdom and French ports were fixed at £40 and over 30 years of age at £30 per dead-weight ton. There have been many other recognitions of age as a factor in determining values during the war period.

As I have stated, there were numerous experts on ship values whose testimony was before the commission. We had all of their evidence analyzed, compiled, stated chronologically. They gave in support of their conclusions references to actual sales, the dates, the names of the ships, the gross tonnage, the dead-weight tonnage, etc., and that data was all compiled. There was a compilation of more than 700 time charters and 1,500 trip, voyage, and net charters; those were compiled and reference was made thereto as a basis for arriving at the value of a ship at a given time in the condition in which she then was. From actual application of those rules we know, and the opinion reflects the fact, that values varied on the same ship at different times.

Senator BAYARD. They were in the nature of working tables?

Mr. PARKER. Yes.

Let me also refer to this fact, that we had before us evidence of charters that were entered into during the war period to be effective after the war, which furnishes some evidence of the value of a ship if it survived when the war would be concluded.

We had some cases in which charters were entered into in the early part of 1918 at the time when time charter rates were, as I now recall, about 44 shillings per dead-weight ton. Charters were entered into then for delivery of the ships after the war ended at 25 shillings per

dead-weight ton, showing what the trade then thought would be the value of the ship after the war.

We had a claim of the Gans Steamship Line, which had made charters, during the war but before the United States entered it, covering 16 German ships that were then in the various German and other ports. They could not leave. The Gans Steamship Line entered into charters for them to take effect at the declaration of peace.

Senator KING. Regardless of the time when the declaration was made?

Mr. PARKER. Regardless of the time when peace became effective.

Senator KING. One year or twenty years.

Mr. PARKER. There were a number of different charters. There were 16 in all. One of those ships was building, at the time the charter was entered into, at Luebeck. Others were at Hamburg and other ports. These charter rates were much less than the prevailing rates at the time the charters were entered into. The Gans Steamship Line was an American corporation. After the war they demanded the ships, which under the treaty of Versailles had been requisitioned by the German Government and delivered to the Allied pool. Germany could not deliver the ships. The Gans Steamship Line filed with the commission a claim against Germany for frustration of those charters, amounting to nearly $7,000,000, to recover the difference between the charter rate stipulated for in the charters and what they had to pay in the market for other ships.

Those charters furnish some evidence of what the owners of the ships and the charterer, willing to contract for the ships, thought the ships would be worth during the war and after the war.

The rates stipulated for were considerably less than the actual prevailing rates when the war closed, but the rates, which got up to 45 shillings, 50, and on up before the war closed, began to gradually decline until, at the end of 1921, it was 7 shillings per dead-weight ton.

The CHAIRMAN. Have you a list of all of the names of the interned ships with the valuation of them?

Mr. PARKER. No, sir.

The CHAIRMAN. You have not got that?

Mr. PARKER. No. The Mixed Claims Commission had nothing to do with the interned ships.

The CHAIRMAN. I was going to ask you that question, because I did not think it had.

Mr. PARKER. No.

The CHAIRMAN. It was ships that were sunk by Germany and Austria?

Mr. PARKER. Yes. There were one or two of them that had been German ships and were purchased by American owners.

The CHAIRMAN. After the declaration of war?

Mr. PARKER. Yes, but before we got into the war.

It may be interesting to refer very briefly to one of those, which was the *Housatonic*. That belonged to one of the German companies and had sought a port of refuge in the United States at the outbreak of war in 1914. She was a single-screw steamer, built in Glasgow in 1891. The original cost of construction was $210,000. She had been written off for depreciation until she stood on the books of the German shipowner at $83,000. She was sold for $85,000 in

1915; America was neutral at the time. The American owner could not use her any more than the German owner, because Great Britain took the position that a German ship transferred to neutral nationality during the war was subject to seizure and condemnation.

The CHAIRMAN. In other words, instead of using the ship, they would use the money that was paid for the ship?

Mr. PARKER. Yes.

Senator KING. Germany, then, took the position, in view of the fact that it was voluntarily interned, that is, it had sought refuge, and the owner sold it, that in computing the value they must take into account the disadvantages and the disabilities and the fact that—

Mr. PARKER. I do not think the German Government took any position. She was an old ship that the German corporation had over here. She stood on the books at $83,000; she was sold for $85,000. What could the American purchaser do with her? It could not use her because she was subject to seizure and condemnation by the Allied Governments because she was a German vessel that had been transferred during the war. So it chartered her to a British concern with a stipulation that the vessel would be chartered during the period of the war at a very low charter rate, with the stipulation that the charterer should procure an agreement from the Allied Governments that she would not be disturbed or seized. That was one of the conditions under which the American corporation could afford to buy. Then it also provided that the British charterer should keep her insured in the sum of some $275,000, which was done. She was sunk, and the owner collected the $275,000. The replacement value was then nearly $900,000.

The American owner presented a claim for the balance. We held that that was not a free ship; she had been a German ship and it was not a free ship in the hands of the American company any more than she had been in the hands of the Germans, and because it had chartered her to the British charterer at a very low charter rate, which just about paid the costs that the owner was put to for the crew and other operating expenses, there was no profit in it. The only way in the world that the owner could make any profit out of her was to collect its insurance, which it did, and therefore it was not entitled to any recovery.

Senator REED. Have you any case in which the commission had occasion to value American ships that were seized in German ports?

Mr. PARKER. I do not remember such a case.

Senator REED. You had no occasion, then, to take the converse of the proposition of ships belonging to claimants that were seized by Germany?

Mr. PARKER. No.

I will furnish, in response to the chairman's request, a memorandum as to the valuation of ships by the commission.

(The memorandum is as follows:)

SHIP VALUATION

Something has been said in the hearings with respect to the average value of American tonnage damaged or destroyed by Germany as determined by the decisions of the Mixed Claims Commission, United States and Germany.

Averages are misleading. For practical purposes they are of little or no assistance in determining the average value of a ship during the war period at a

given time or place and under conditions then existing. This is true because there are many factors which must be taken into account in arriving at the fair market value of any vessel at any particular time and place and the weighted value of each factor varies from time to time as conditions change.

It may be helpful briefly to refer to a few of the decisions of the umpire dealing with this question. In Administrative Decision No. VII, at page 337, this language was used:

"Where a vessel was destroyed, Germany is obligated under the treaty of Berlin to pay the reasonable market value of the whole ship, including all estates or interests therein, provided they were on the requisite dates impressed with American nationality. In arriving at the market value of the whole ship, it is a free ship that is valued, and no account is taken of the independent market value of any charter that may exist thereon. Such charter may at a given time be an asset or a liability as determined by several factors, chief among which is the relation of the stipulated hire to the current market hire.

"When the whole ship destroyed was American-owned the aggregate amount of Germany's obligations for its loss is not affected by the existence of a charter or charters. But if any estate or interest in the ship was foreign-owned and the remainder American-owned, then Germany's obligations may be affected by the existence of a charter.

"If the vessel destroyed was American-owned and under a foreign charter, and (*a*) if the stipulated hire was less than the current market hire, then ordinarily the charter was an asset to the charterer and an encumbrance and burden on the ship, so that the American owner owned less than a free ship; but (*b*) if the stipulated hire was more than the current market hire, then the charter ordinarily was a liability to the charterer and an asset to the owner tending to increase the price which could have been obtained for the vessel by selling it on the market at the time of the loss, so that the American owner owned more than a free ship."

The following is taken from Administrative Decision No. VII–A at pages 706, 710, and 711:

"The commission has had procured and laid before it much data dealing with the relative demand and supply of ships; charts purporting to reflect the market prices of vessels with the fluctuations in those prices graphically expressed; and tabulated statements of actual sales of bottoms made during the periods prior to, throughout, and subsequent to the World War, compiled from evidence filed in numerous cases before the commission. From these it is possible to evolve a fairly accurate composite of tonnage values at any particular time during the war period. But at best this presents merely a composite picture, a general average, and while helpful as a general guide it can not safely be used as a standard of measurement without making particular adjustments for the actual conditions which obtained in each particular case. Ships are in a sense living things, created to move and to carry, not to be consumed. Food and fuel may be measured on a unit of value per ton, but a ship's value must be measured according to her ability to perform—to carry safely in volume with dispatch and economy."

"* * * After a most painstaking examination by the commission it has been found impossible to lay down any fixed rule or mathematical formula for measuring in every case the extent and value of the charter encumbrance, if any such is found to exist. But under conditions usually obtaining in the cases before this commission this measure can be fairly taken by ascertaining the excess, if any, of the current charter hire at the time of loss over the hire stipulated for in the charter and extending such excess hire over that period (never exceeding the charter term) during which, under the law of averages, the ship under the conditions then existing would probably have survived and also probably have escaped requisition under circumstances working a frustration of the charter. The amount so arrived at (subject to the application of such other of the limiting factors hereinafter mentioned as may obtain in that particular case), reduced to its present value as of the date of the ship's loss, will ordinarily represent the charter encumbrance and the value of the estate which the charterer had in the vessel."

It is pointed out in that decision (pp. 711, 712) that in order to insure accuracy and uniformity in the commission's application of the rule announced there had been assembled in the office of the umpire a considerable body of pertinent data collected from the records of cases before the commission and from all available official sources, including—

"(1) Many affidavits of shipping and of chartering experts with lists which were submitted by them of actual sales made and charters entered into during the war period;

"(2) Compilations procured from different sources aggregating approximately 700 time charters actually entered into in the United States during the war period and fairly distributed throughout that period, involving ships of United States, British, Canadian, Norwegian, Swedish, Danish, Dutch, Italian, French, Japanese, and other registry, tabulated in chronological order with respect to the date on which the charter was fixed, giving the name of the ship, flag, tonnage, charter rate, trade, delivery, and range;

"(3) Similar compilations of approximately 1,500 trip, voyage, and net charters;

"(4) A complete statement of all charters on foreign and American ships which were approved by the United States Shipping Board from October 3, 1917, to May 26, 1919, setting forth chronologically in tabulated form the name of each vessel, her type, flag, tonnage, date of fixture, date of approval, name of charterer, voyage, cargo, and rate;

"(5) A similar statement, covering the same period, of charters disapproved, canceled, or modified by the United States Shipping Board, with its reasons for such action, frequent among which was the failure to file with the board a guarantee to maintain and not exceed the board's rates;

"(6) Charts showing graphically the fluctuations in the average rate paid for steam vessels of all sizes under time charters covering every portion of the war period and a considerable time both prior and subsequent thereto;

"(7) A statement, compiled from official sources, of all war-risk insurance rates promulgated by the Bureau of War Risk Insurance, United States Treasury Department (now United States Veterans' Bureau), beginning with September 17, 1914, and ending with November 27, 1918;

"(8) A statement, month by month, compiled from official sources, covering all war-risk insurance written by the said Bureau of War Risk Insurance, beginning with September, 1914, and ending with December, 1920, setting forth the amount of the insurance written, the amount of the losses paid, and the percentage of losses paid to the insurance written;

"(9) Similar data on British rates, insurance, and losses, compiled from official sources;

"(10) A statement, by nationalities and by months, throughout the war, of gross tonnage of merchant shipping (excluding that of Germany and her allies) lost through enemy action, with a similar statement of new merchant vessels constructed and brought into service; and

"(11) Contemporary reports, contained in shipping journals and similar publications, and other data throwing light on shipping conditions as they existed at different times throughout the war period."

In the same decision the following statement is found (pp. 707–708):

"There are many factors which must be taken into account in arriving at the fair market value of any vessel at any particular time and place, and the weighted value of each factor varies, of course, from time to time as the conditions change. This is especially true with respect to the abnormal and kaleidoscopic conditions created by the World War, as a result of which the trade in which a vessel was engaged, or the particular seas to which her use was restricted, or her nationality (as affecting the extent of her exposure to regulation, requisition, or destruction), considered in connection with the laws of the nation to which she was subject, may, singly or together, have had an influence more or less controlling in determining her market value, although in normal times they would have been much less important.

"Normally the cost of a vessel, her age and physical condition, and the cost of replacement are important factors in arriving at her market value. Some of the shipping experts whose testimony has been presented to the commission go so far as to declare that during the war period those factors were without influence in determining the value of a ship, which was measured solely by her availability for use. While the evidence before the commission of actual sales made and of charters actually entered into, involving bottoms of varying ages and classes does not justify those extreme statements,[8] nevertheless there were times during the war period when the demands for tonnage so far exceeded the available supply, and those demands were so imperative, that factors normally controlling

[8] For instance, in the agreement for compensating Dutch shipowners by the United States and Great Britain, it will be noted, age was a material factor in fixing ship values. Bottoms up to 10 years of age were valued at $237.50, 10 to 30 years at $190, and 30 years and over at $167.25 per dead-weight ton. And in February, 1918, under the new scale for rates and insurance fixed for vessels plying between United Kingdom and French ports the values for war-risk insurance on steamers 10 years old or less was fixed at £40 and over 30 years, at £30 per dead-weight ton. Elsewhere there have been many other recognitions of age as a factor in determining values during the war period.

were so far outweighed by the consideration of availability for use as to become comparatively insignificant. But even that condition was not constant, and conditions existing at the particular time must be looked to in determining the relative importance of the various elements obtaining in each case.

"Speaking generally, the factors which must be taken into account during the war period in fixing the value of the whole ship, including all estates therein, are availability for use, cargo capacity, nationality of registry and of ownership, nationality of charterer, class, original and reproduction costs, speed, age, draft, and adaptability for particular trades."

The case of Munson Steamship Line, claimant (pp. 719–725), was put forward for the alleged value of an interest as charterer of the British S. S. *Lodaner*, alleged to have been destroyed by a German submarine April 14, 1918. The claimant had chartered this ship from the British owner for a period of five years from March 23, 1916. The charter hire stipulated to be paid by the charterer, expressed in British sterling per calendar month, was as follows:

(*a*). March 23, 1916, to March 23, 1917, £2,850, being 10s. per dead-weight ton.
(*b*) March 24, 1917, to March 23, 1918, £2,280, being 8s. per dead-weight ton.
(*c*) March 24, 1918, to March 23, 1919, £1,710, being 6s. per dead-weight ton.
(*d*) March 24, 1919, to March 23, 1921, £1,425, being 5s. per dead-weight ton.

It will be noted that the time-charter hire stipulated for during the fourth and fifth years was only one-half that for the first year.

The following is taken from the opinion of the umpire:

"The experienced and able president of the claimant in his testimony filed herein explains this decreasing schedule thus:

"'* * * In 1915 owners and charterers thought that the war could not go on more than a year or so because of the exhaustion of the gigantic forces and finances involved. The owner preferred to take a higher rate for the beginning of the charter and the second year of the charter because of the belief that the war would be over by the time that the second year had expired and that thereafter the market would go back to more normal rates.'

"The average of the rates for this five-year charter was 6s. 9⅜d. per dead-weight ton per month, which was approximately the average time-charter hire for the year 1900 and the year 1912, which were the peak years of the 15-year period just preceding the World War. This average charter rate was substantially above the average for the 15-year period, 1900–1914, inclusive, and approximately 2s. 5d. above the average for the year 1914.

"* * * It will be recalled that in fact the average time-charter hire per deadweight ton per month did drop from approximately 58s. at the time of the signing of the armistice to approximately 29s. toward the end of the first half of 1919, when there was a recovery, and that by the end of 1919 the rate was approximately 47s., after which time-charter rates steadily declined to approximately 17s. at the end of 1920 and to approximately 7s. at the end of 1921. The claimant's char r by its terms would normally have expired with March 23, 1921. * * *

"* * * It was also about this time [April 14, 1918], with the current time-charter hire at approximately 44s. per deadweight ton per month, that a few steamers were chartered for delivery 'after the war' at 25s. per deadweight ton per month for a period of three years."

It will be noted that at the time the *Lodaner* was destroyed the charter hire stipulated for in the charter was 6s. per dead-weight ton per month; that beginning with March 24, 1919, the stipulated rate for a period of two years was 5s. per deadweight ton per month; that the current charter rate at the time the ship was destroyed was 44s. per dead-weight ton per month; *and at that time* a few steamers were chartered for delivery "after the war" at 25s. per dead-weight ton per month for a period of three years.

The conclusion was reached that the American charterer had an interest in the British steamer *Lodaner* at the time of her destruction, April 14, 1918, of the value of $145,000 and an award was entered for this amount.

From the decision in the case of Gans Steamship Line, claimant (pp. 832–836) it appears that the claimant had during the period of American neturality entered into charter parties with German owners of 16 German ships. In varying forms of expression the charter provided for delivery "after peace has been concluded and trading for German ships is free in all waters" or "after official conclusion of peace" or "after officially declared conclusion of peace" or "after general conclusion of peace" or similar expressions. At the time the charters were fixed the vessels were tied up at different ports, among them Hamburg, Luebeck, Antwerp, Bergen, Bilbao, Cadiz, and Barcelona, and one was building at Stettin, another

at Luebeck. The vessels were expropriated by Germany in order to comply with the provisions of the treaty of Versailles and delivered to the allied and associated powers through the Reparation Commission. As claimant was unable to procure possession of the ships under the charters, it chartered other vessels and made claim before the Mixed Claims Commission for the excess in charter hire of the amount actually paid by it over the amount which it would have been required to pay under its charters with the German owners, which amount it fixed at $6,822,000. For reasons set forth in the opinion the claim was denied. The facts are referred to here as evidencing that German ships which could not venture out of port during the war were the subject of contract and had a charter value to take effect after the termination of war. The stipulated post-war charter hire in this and other cases are factors to be taken into account in determining the value of ships which could not be used by their owners until after the war.

The rule announced by the umpire in the case of the American claimant, Housatonic Steamship Co. (Inc.), (pp. 689–694), for the loss on February 3, 1917, of the *Housatonic*, is of interest in connection with the problem of the value of German ships which the committee is considering. The *Housatonic*, a steel steamer of 3,143 gross tons, was built in Glasgow in 1891. Her original cost of construction was $210,000. Her German owner had from time to time written off for depreciation so that her book value was $83,000 when her German owner sold her in 1915 to the claimant, an American national, for $85,000. At that time she was in an American port where she had sought refuge following the outbreak of the war in 1914, from which she was unable safely to issue. Some time after the purchase the American owner on February 23, 1916, chartered the *Housatonic* to British nationals "for the term of the present war." One of the pertinent provisions of the charter was that the charterer undertook to secure from the allied Governments a guarantee that notwithstanding the transfer of the ship from German to American registry "during the present war, the steamer shall be immune" from attack or seizure by the British and allied Governments. At that time the United States was neutral. Great Britain and other allied powers were asserting the right to capture and condemn vessels transferred subsequent to the outbreak of war from German to neutral registry. Therefore the *Housatonic* was of little more value to the claimant than she had been to her previous German owner. Obviously it was for this reason that the claimant entered into a charter party with a British firm at a hire of about 7s. per dead-weight ton per month at a time when the current charter hire was about 32s. per deadweight ton per month.

Manifestly one of the principal considerations moving the claimant to enter into this charter party was the obligation of the British charterers to secure immunity against attack or seizure on the part of the British and allied Governments.

In the course of the umpire's opinion this language was used (pp. 691, 692, and 693):

"* * * According to the Norwegian schedule the *Housatonic* had a value at that time of about $855,839. But the *Housatonic* was not a free ship. She was under charter to a British firm until 'the cessation of the present war,' at a stipulated hire of about 7 shillings per month per dead-weight ton, while at the time of her loss the current rate was 46 shillings 6 pence per month per dead-weight ton. Since that charter had been entered into the cost of operation of the *Housatonic*, which was borne by the claimant herein, such as wages of the master and crew, the cost of provisions, stores, repairs, etc., had greatly increased, but the income from the hire was stationary, fixed by a charter of uncertain duration, at a rate of less than one-fourth of the current rate at the time the charter was entered into and less than one-sixth the current rate at the time the ship was destroyed. These abnormally high charter rates were caused by the abnormal demand for tonnage for immediate use far in excess of the available supply. While ordinarily the prevailing freight rates were a controlling factor in determining the reasonable value of a free ship, they had little influence in determining the value of the owner's interest in the *Housatonic*, which was not a free ship. The fact that she was not free, the fact that she was not available to the owner so that he might take advantage of the abnormally high freight rates and charter rates, but must be operated exclusively in the interest of a British firm until the 'cessation of the present war' at charter hire little, if any, in excess of the operating costs which must be borne by the owner, render the owner's interest in her of a highly speculative and doubtful value.

"If, then, the claimant had been willing to sell the *Housatonic*, encumbered with this charter on February 3, 1917, and had sought a purchaser willing to

buy, where could it have found such purchaser and at what price could a sale have been made?

"* * * The charter provided that the charterer should pay the premiums for war-risk insurance on a valuation of £58,000 (which, converted into dollars at the prevailing rate of exchange, equaled $275,772.60), and from this insurance the claimant received $273,353.30, the proceeds after deducting the 1 per cent commission of the insurance broker. Considering the transaction as a whole, it seems reasonably apparent that the chance of collecting this insurance, amounting to approximately $190,000.00 in excess of the purchase price, was at least one of the factors influencing the claimant to purchase and let the vessel. However this may be, there is no evidence in the record to justify the conclusion that the claimant could probably have sold the *Housatonic* encumbered by her charter on or about February 3, 1917, for as much as the insurance which it collected. It follows that the claimant has failed to discharge the burden resting upon it to establish a net loss suffered by it resulting from Germany's act in destroying the *Housatonic*."

The "tanker cases" (pp. 660–669) involved claims of American nationals for losses alleged to have been suffered by them through the sinking by German submarines of seven steamships (tankers) owned by British subsidiaries of the claimants. At the time of their destruction these ships were under requisition by the British Government. The value of each as a requisitioned vessel as of the time of its loss was arrived at and the amounts so ascertained paid by Great Britain to the owners. The amounts so paid aggregated $6,030,000. The claimants alleged that as free ships in a free market at the time of the loss of each their aggregate value was $10,600,000, and claim was made against Germany for the balance.

In the course of the opinion denying the claim the umpire used this language (pp. 662, 665, 666, 668, and 669):

"In the last analysis, the basis of the claims here put forward is that as the American shareholders of their British subsidiaries the claimants were damaged through the sinking of these seven vessels by Germany to the extent of $10,607,500.00, being the money equivalent of these ships as free ships at the time of their loss; that the British subsidiaries of claimants have been paid by Great Britain the sum of $6,030,668.00, being the money equivalent of these ships as requisitioned ships; and that the balance of $4,576,832.00 represents the uncompensated damage suffered by claimants, American nationals, resulting from Germany's act, and for which it is claimed that Germany is obligated to make compensation under the terms of the Treaty of Berlin.

"The British courts have found as a fact that the value of a British ship during the war period varied according as it was or was not under requisition or subject to requisition; that if not under requisition, but with a possible chance of being requisitioned, it would not command as large a price as it would if free from requisition under a guarantee from the Government not to requisition it; and if actually under requisition but with a possible chance of being released therefrom it would not command as large a price as it would if free from requisition but with a possible chance of being requisitioned. In the *Longbenton* case a British vessel was requisitioned by the British Government and operated by the owners under the terms of the official charter party known as 'T–99,' under which the ships with which we are here concerned were being operated. The *Longbenton* was lost by enemy action on June 27, 1917. Its owners contended that clause 19 of this charter party, which provided that in the event of its total loss from risks of war the British Government should pay the owners 'the ascertained value of the steamer * * * at the time of such loss,' was in effect a contract of indemnity against any requisition, and that they were entitled to recover on the basis of its value had it been free from requisition, and that the Government in assessing its value was not entitled to take into account the fact that it was under requisition at the time of its loss. The British High Court of Justice rejected this contention and held that for the purpose of assessing the value of the vessel at the time of its loss all of the facts must be taken into consideration, and one of the most material facts was that the vessel was at the time of its loss under requisition. In other words, at the time of its loss the vessel was a requisitioned vessel, not a free vessel, and its value must be ascertained accordingly. In that case the umpire in the arbitration found as facts that the *Longbenton*, which was under requisition at the time of its loss, had a value of £28,500; that had it not been under requisition but subject to requisition it would have had a value of £44,500; and that has it not been under or subject to requisition it would have commanded a still higher price. The court held that the fact of its being

under requisition was one of the most important facts to consider in determining its value at the time of its loss, and that the Government was only obligated to pay the owners the sum of £28,500, its value as a requisitioned ship at the time of its loss. The owners of the seven tankers here under consideration dealt and settled with the British Government on the basis of the rules laid down in this *Longbenton* case.

"The British law, and its application to the owners of these vessels and to the vessels themselves, are facts to be taken into account in determining what it was that the owners lost. It is the subject matter of their losses which is here dealt with. The value of that subject matter will be considered later. For some time prior to and at the time the ships were sunk by Germany the British subsidiaries of the claimants were not the owners of free ships. Hence they could not have lost free ships through Germany's act in destroying them. What they did in fact lose were ships encumbered with British requisitions. Such requisitions imposed burdens on the ships, which under the British law were lawfully imposed. It is undisputed that these ships, burdened with requisitions, had a value very substantially less than they would have had if they had been free ships in a free market. But they were not free ships, and the fact that they were not results from the claimants herein having voluntarily placed the title to them in British corporations, registering them as British ships, and subjecting them to British requisitions. As such they were treated by Great Britain as all other British-owned ships were treated. Presumedly the claimants derived, or expected to derive, advantage through the British ownership and the British registry of these ships. But they can not here complain of the disadvantages resulting therefrom.

"The act of Great Britain in requisitioning the ships unquestionably resulted in very materially depreciating their value, to the damage of claimants' British subsidiaries. In the last analysis it is the amount of this damage for which claimants are seeking an award against Germany; that is, the difference between the value these ships would have had if at the time of their destruction they had been free ships and their actual value at the time of their destruction as requisitioned ships.

"Under the treaty of Berlin Germany is obligated to compensate the claimants as American shareholders in British corporations to the extent of the losses, if any, they have suffered as such shareholders due to the act of Germany in destroying the seven ships owned by such corporations. But what did Germany destroy? She destroyed seven ships encumbered with British requisitions. Her liability therefor under the treaty is limited to the value at the time of the loss of the ships so encumbered, less the amount which the owners of the ships have already received as indemnity for such loss. But the claimants admit that, following the *Longbenton* case, Great Britain has paid to their British subsidiaries the money equivalent of the value of these vessels as requisitioned vessels, so that it follows that these British subsidiaries have already received the money equivalent of all that they had to lose, and all that they in fact did lose, namely, requisitioned ships."

(Witness excused.)

STATEMENT OF HON. ROBERT W. BONYNGE, AGENT OF THE UNITED STATES BEFORE THE MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY, AND BEFORE THE TRIPARTITE CLAIMS COMMISSION (UNITED STATES, AUSTRIA, AND HUNGARY)

Mr. BONYNGE. Gentlemen, I do not want to go over the ground that has been so fully covered by Judge Parker, but there are a few matters that he referred to that I would like briefly to mention.

Judge Parker in his statement this morning said that I had fixed the maximum limit of the claims remaining to be adjudicated at some $20,000,000. That is the principal. That does not include the interest.

The CHAIRMAN. You speak of the 216 cases that remain?

Mr. BONYNGE. Yes. The amount demanded in those cases aggregates close to $40,000,000. My estimate is that we may recover a principal of about $20,000,000, and the interest would be about 50 per cent of that; so that the maximum would be, including the interest, about $30,000,000.

The total claims now allowed by the commission aggregate $221,000,000 odd. If I am successful in all the remaining cases, or in the majority of them, the maximum would be, including interest to January 1, 1928, about $251,000,000 or $252,000,000.

The CHAIRMAN. That includes everything?

Mr. BONYNGE. That includes everything, the sabotage claims and all. Of course if the sabotage claims are successful, that would be the amount, in my judgment, about that amount.

Senator KING. About $40,000,000?

Mr. BONYNGE. Of the remaining claims it would be about $30,000,000, including interest, to January 1, 1928.

Senator REED. And if the sabotage claims are successful?

Mr. BONYNGE. If the sabotage claims are successful. If the sabotage claims are not successful, it will reduce the maximum to about $10,000,000.

The CHAIRMAN. Including interest.

Senator KING. I understood you to say that if you were successful as agent the judgments obtained or awards made would amount to over $200,000,000.

Mr. BONYNGE. No. The awards already entered by the commission now aggregate $221,000,000 odd. If I am successful in these remaining 216 claims and recover what I think I will recover in those cases, it will bring that aggregate up, including interets, to about $251,000,000.

Senator REED. How long will it probably take to adjudicate the remaining cases?

Mr. BONYNGE. Judge Parker said this morning that he thought they could all be adjudicated by midsummer. I think that is a little optimistic. I do not expect that we shall be able to conclude them before next fall, at the earliest.

Senator KING. Is there any reason for perpetuating the commission beyond a year?

Mr. BONYNGE. I do not see any, now.

You spoke this morning about late claims—or one of the Senators did.

Senator KING. Senator Shortridge.

Mr. BONYNGE. Yes. If late claims are admitted I think the life of the commission will have to be extended for two or three years. There are five or six thousand late claims to be adjudicated.

Senator KING. What is the character of the claims that have been presented not within the time limit?

Mr. BONYNGE. I can read you a letter that I wrote to the Secretary of State, which gives the whole story.

The CHAIRMAN. Put the letter right into the record.

Mr. BONYNGE. This was on March 4, 1926.

The CHAIRMAN. There has been a change since then, has there not?

Mr. BONYNGE. There has been a change since then. I have not been over those that were filed since that time.

The CHAIRMAN. Have there been many?

Mr. BONYNGE. Yes, I think so.

I received a letter from Senator Shortridge to-day—I found it on my desk during recess—asking about the status of a claim. No such claim as the letter referred to has ever been filed. The commission has now been in existence for five years, and that is the first notice I ever had of the claim he refers to.

Senator KING. Would it not be well for Mr. Bonynge to prepare a statement showing information brought down to date?

Mr. BONYNGE. That would require the examination of perhaps another two thousand claims over in the Secretary of State's office, and it would not be available for you until after you had made your report.

Senator REED. Let us get this, for the present, anyway.

Mr. BONYNGE. The letter is dated March 4, 1926, addressed to the Secretary of State, and it reads as follows:

I have the honor to report that the agency is daily in receipt of applications to file claims against the Government of Germany. My attention has also been called to the fact that since April 9, 1923, about 2,000 claims have been filed with the Department of State.

The question naturally arises as to what, if any, disposition should be made of these late claims. In order to be in a position to make a recommendation in connection therewith, I have personally, with the assistance of the German agent, examined all papers filed in support of these claims, and have made an estimate of the maximum amount that would be allowable on such claims under the decisions of the Mixed Claims Commission, United States and Germany. In making this estimate no consideration has been given to possible defenses that Germany might interpose to many of the claims, nor to the probably inability of many of the claimants to furnish evidence either of their American nationality or of facts sufficient to warrant the entry of an award. The estimate as to the amount involved is taken on the statements of the claimants and a consideration of the rules and decisions applicable to such claims.

I am inclosing a copy of the estimate thus made, showing the maximum amount allowable on claims now on file to be the sum of approximately $3,750,000. This is, in my opinion, an extremely liberal estimate. In all probability the total amount that would be finally allowed after thorough examination of the claims would not much, if any, exceed fifty per cent of the estimate thus made.

It will be noticed that the claims have been divided into different categories. An examination of these claims discloses that over 90 per cent of them are not claims for strictly war damages due to hostilities or operations of war, but are for depreciation in the value of securities, bank deposits, private debts, the interests of American citizens in German estates, or are based on German war bonds, and many of which are entirely of a speculative nature.

As you are aware, the time for filing claims and giving notice to the Mixed Claims Commission, United States and Germany, and to the German Agent, of the claims to be filed and the amount involved was by an exchange of notes between the two Governments prior to the execution of the Agreement of August 10, 1922, fixed at six months after the first meeting of the commission, and that time expired on April 9, 1923. The Department of State gave wide publicity to the fact that claims would have to be filed within the time limited or that they could not be considered by the commission. The fact that 12,416 individual claims were filed within said time, involving practically $1,500,000,000, demonstrates that the publicity was effective.

As I understand the principal reasons for the comparatively short time allowed for the filing of claims was that four years had already elapsed since the Armistice, many claims had been filed or notice thereof given to the Department of State, and undoubtedly both Governments recognized the supreme importance, for economic and political reasons, of having the total amount of Germany's liability for war losses to the United States determined at the earliest practicable date.

The commission and the agencies of both Governments, appreciating these considerations, have been diligently endeavoring to bring their labors to an early conclusion, with the result that, in less than three years from the expiration of the time limited for filing the claims, over 90 per cent of the work has been

finished. This result has been accomplished notwithstanding the fact that the American agency has experienced great difficulty in a large number of cases in obtaining within a reasonable time, from the claimants whose claims were notified within the time limited, the necessary evidence in support of their claims to enable the agency to present them to the commission for adjudication.

The German Government entered into the agreement of August 10, 1922, with the understanding that the claims should be filed and notice thereof given to the German agent within the time limited, and the rules of the commission also so provide.

Whatever limit of time may be established for the filing of claims, there always will be some meritorious claims that will not be filed within such limitation. Every limitation of time on causes of action or claims works a hardship in some individual cases. After all, the main consideration, it seems to me, in considering the problem now presented is whether the advantages to be gained by extending the time would offset the disadvantages. Unquestionably, there are some meritorious claims, as there always will be, for which compensation can not be awarded. But the holders of such claims may fairly be charged with laches in not presenting their claims in time to avail themselves of the opportunity afforded them by the Government of the United States to have their claims established and adjudicated by the agency maintained for their benefit at Government expense.

If the time limit should now be extended, I am convinced, in view of the large number of claims now being daily filed, that many thousand additional claims, many of them of doubtful validity, would be filed, necessitating an examination of them by the agency and their adjudication by the commission or some other organization to be established for that purpose, all of which would involve a large additional expenditure of money on the part of the United States and might possibly delay the final payment of the claims that were filed within the time limited to the great injury of the claimants who were diligent in the presentation and prosecution of their claims.

In order to obtain the necessary evidence to support many of the claims that have resulted in awards, it was found necessary to have a representative of the American agency in Germany for a considerable period of time. This was particularly true in reference to estate claims in which American citizens claiming interests in German estates had little or no knowledge of the value of the estates, their condition, or their interests therein. If the late claims are now to be considered, it will probably necessitate again sending a representative to Germany to collect the necessary evidence to establish the validity of the claims. It would doubtless take from one year to two years' additional time to dispose of the late claims.

Moreover, my examination of the claims filed convinces me that the great majority of them have been filed as the result of solicitation on the part of attorneys who have been circularizing possible claimants throughout the United States.

After careful consideration of all of these matters, it is my opinion, and I so recommend, that it would be inadvisable for the Government of the United States to undertake to have a modification of the agreement heretofore made with Germany under which an extension of time would be granted for the filing of claims, or to attempt to make any provision for the settlement and adjudication of claims that were not presented within the time limited by the agreemet with Germany and the rules of the commission.

The inclosure with it is a recapitulation of the late claims now in the possession of the State Department, giving the following figures:

Estates	$578, 460. 00	Submarine warfare	$211, 510. 00
Bank deposits	798, 910. 00	Parcel post	75. 00
Bonds	1, 792, 510. 00	Prisoner of war	5, 050. 00
Debts	261, 452. 78	Sequestration	500. 00
Requisition	57, 500. 00		
War damages	67, 000. 00	Total	3, 772, 967. 78

Then it says:

This computation includes claims of the Association of American Holders of Foreign Securities, the Parson Trading Co. claim, the war damage claims in connection with the collision with the *La Gloire*, and the claim for requisition of property in Belgium. It does not take into consideration the claim of the Amer-

ican Union Bank of New York City which the department informed you might possibly be filed in the approximate amount of $1,000,000.

Senator KING. Two or three attorneys have told me and several persons have written me that the publications referred to consisted of two notices. One attorney told me that he made a very diligent search and finds that that is true. So that there was not wide publicity as indicated in your letter.

I know nothing myself about it, and have no opinion.

Mr. BONYNGE. I think there was a statement filed with the Ways and Means Committee showing just exactly what the State Department did.

I can not remember just how many notices they gave, but every time the Commission had a meeting there was a notice of the meeting.

Senator KING. It is a matter that we cannot shirk and ought to deal with, for this reason, among others, aside from the question of our doing all we can in a proper way to protect the validity of legitimate claims. If we do not, appeals will be made to Congress from now until doomsday to open up the cases, and if Congress does not see fit to do so demands will be made that the Federal Government appropriate because we have denied tham an opportunity, whereas if they had an opportunity to go before the Mixed Claims Commission, in view of the statement which has just been made by our agent, it is apparent that the award would be quite insignificant—three or four or five millions at the outside as against several hundred millions of claims.

If you have a finding by the Commission, that ends it; it is a finality. Otherwise, Congress will have it upon its hands for an indefinite period.

Senator MCLEAN. It will create a special committee to pass on it.

Senator KING. Yes, but it will cost hundreds of thousands of dollars, and you will have a perfect deluge of petitions and letters to Congress of charges of unfairness upon the part of Congress in dealing with its own nationals.

That is merely argumentative. I do not think that ought to be persuasive, but I do believe, Mr. Bonynge, that there were many persons who have bona fide claims, or at least some who had bona fide claims, who did not know and were in a position where they probably could not have known of the notice that was given by the State Department. In my own opinion, the State Department was a little too rigid and narrow in the time limit.

Senator REED. That will always be the case. At the present moment there are $72,000,000 of Second Liberty Bonds unpresented, although we all know that every effort has been made by newspaper advertising and by news stories and by wireless broadcasting and other means to get those bonds in. It illustrates the impossibility of reaching all claimants.

Senator KING. Oh, I think that is true.

Senator MCLEAN. Do you not think it is better that we should dispose of these claims that are important and which have been filed in time and that amount to a large sum, and get them out of the way, rather than to sacrifice the adjudication of them for perhaps two or three million dollars in claims that are questionable?

Mr. BONYNGE. And these are people who prosecuted their claims with diligence.

I want to call the attention of the committee to the fact that in the hearings before the Finance Committee of the Senate last year there is a memorandum setting forth on pages 172 to 176 the efforts made by the State Department to bring to the notice of possible claimants the necessity of filing their claims before April 9, 1923. There is no need of repeating it. It is already in the hearings.

The CHAIRMAN. The same question came up a year ago.

Mr. BONYNGE. Yes.

Senator KING. Did not the Finance Committee a year ago adopt an amendment recommending that the President open negotiations with the German Government with a view to extending the time within which claims might be presented?

Senator MCLEAN. You will have these claims fifty years from now, probably.

Mr. BONYNGE. Even if you should fix another limit, there will still be meritorious claims not presented within the extended period.

I really think, gentlemen, that if you open it up it will be more for the benefit of attorneys who are soliciting these claims than for the benefit of the claimants.

Senator REED. It will hurt the interest of those people who are diligent?

Mr. BONYNGE. Yes, sir.

The CHAIRMAN. The provision is limited, however, to apply only to those that up to that time had made a filing, even though it had been after the expiration of the time first provided.

Senator KING. After the time the amendment was adopted?

The CHAIRMAN. Yes.

Senator KING. I would have no objection to adopting the same amendment that the Finance Committee adopted at the last session.

Mr. BONYNGE. I am anxious to get for American claimants all that they are entitled to. That is my duty as American agent. But, at the same time, I think I should consider it from the standpoint of the American nation generally and in the interest of those who prosecute their claims with diligence. I am perhaps legislating myself out of office by making that recommendation, but I want to do what is in the best interest of those who have filed their claims in due time and the best interest of the Government.

The CHAIRMAN. The question was brought before the House and the House did not deem it wise to make the amendment or incorporate our amendment in the bill that they passed at this session.

Is there anything else?

Mr. BONYNGE. Yes, Mr. Chairman.

There was some question this morning in reference to debts on bonds that I think I will refer to very briefly.

An American national had two possible claims based upon a German bond. One was for the debt, which is covered by article 296 of the treaty of Berlin. The treaty provided that debts growing out of pre-war transactions and that matured prior to the time we entered the war, or during the period of billigerency, came within the jurisdiction of the commission, and all that the claimant had to do was to show it was a just debt. That was one character of claim. If the bond, therefore, matured prior to the time we entered the war or during the

period of belligerency, or any of the coupons on the bond matured within either of those periods, they constituted debts that were within the jurisdiction of the commission and the award was accordingly made.

The other claim that any American national might have was one for damages, as provided in article 297 of the treaty of Berlin.

Senator COUZENS. If that matured after the war?

Mr. BONYNGE. Before July 2, 1921.

Senator COUZENS. And then if he had paid at the rate of 24 cents to the mark he got 16 cents to the mark?

Mr. BONYNGE. Not if it matured after that.

Senator COUZENS. I mean, prior to that time.

Mr. BONYNGE. If it matured prior to July 2, 1921, he got 16 cents to the mark. That was by treaty provision and the debt agreement that was entered into. By the treaty provision the utmost that he could possibly have gotten would have been 17.4 cents to the mark, because the treaty provided that the pre-war rate of exchange as applied to any nation was to be the average rate of exchange prevailing one month before that particular belligerent entered the war. We entered the war in April, 1917, against Germany. The average pre-war rate of exchange prevailing during the month of March, 1917, was 17.4 cents; so that if thus valorized at that time, that would have been the rate.

But we were not entitled to valorization simply because it was a debt. The treaty of Berlin had a provision for a clearing-office system by which each Government would guarantee the debts of its own nationals and valorize those debts. There were American nationals who owed to German nationals moneys in marks. They can be paid by paying marks no matter what the marks are worth.

In the Austrian Commission the commissioner has held that we were not entitled to valorization of debts, because we had not adopted the clearing-office system; that it was a reciprocal arrangement between the two nations, but that as we had not adopted the clearing-office system we were not entitled to the valorization.

But Germany, under the agreement which we excuted in that case, with the consent of the American Government, represented by the Secretary of State, assumed primary liability for those debts and agreed that they should be valorized at the rate of 16 cents to the mark; so for all debts that came within our jurisdiction we get at the rate of 16 cents to the mark.

Senator REED. But we did not get a compensating agreement applying that valorization to American debts of American citizens due to Germany.

Mr. BONYNGE. No, sir. We had nothing to do with that.

Senator COUZENS. Which means that the Germans are now getting paid dollar for dollar at par?

Mr. BONYNGE. Not if they owe mark debts. If they owe dollar debts; yes, certainly.

Senator COUZENS. With no depreciation of the dollar?

Mr. BONYNGE. Likewise, if a German national owed a dollar debt he has to pay dollars. If it is pounds sterling we would take the average pre-war rate of exchange of the pound sterling one month before we entered the war. If it was francs, the same as to francs.

Senator COUZENS. I confess I can see no justification for that.

Mr. BONYNGE. That is the provision of the treaty. We are governed by that. The treaty is our charter.

Senator COUZENS. I am not charging any responsibility to the commission.

Senator KING. Incidentally, in the administration of the affairs of the commission has it come before you as to whether there were many Americans who were owing German nationals in marks and who were owing them at a time when the mark was worth 24 cents and are now getting out of paying it and paying practically nothing?

Mr. BONYNGE. No, not very many. They would not come under my observation. There were a few cases that came under my observation.

Senator KING. I was wondering to what extent there were American nationals who got the advantage of that.

Mr. BONYNGE. Take insurance companies or other American companies that had offices over in Germany and issued their policies or contracted debts payable in marks.

Senator KING. You mean, American insurance companies?

Mr. BONYNGE. Yes.

Senator KING. They got out of paying, then, did they?

Mr. BONYNGE. They could discharge their mark debts in marks.

Senator KING. I was wondering if we had many policies written in Germany by American insurance companies.

Mr. BONYNGE. Oh, yes; a very large number of them. Some companies made more favorable settlement than the actual value of the mark, just as a matter of business; but they were not obligated to pay anything but marks if their policy read marks.

Mr. PARKER. As a matter of fact, there were some American insurance companies who had branch establishments in Berlin and Vienna that wrote their policies in marks or kronen and settled in marks or kronen; but if their policies had been written in dollars they would have had to pay dollars.

Senator REED of Pennsylvania. Now, we understand about that class of cases.

Mr. BONYNGE. Yes; about that class of cases.

Now, the other class of cases grows out of the exceptional war measures which Germany applied to our debts. The exceptional war measures of Germany prohibited German nationals from paying their debts to the Americans and prohibited taking securities out of Germany. In cases of that kind the remedy of the claimant was to establish, first, that the exceptional war measures did apply to his debts or his securities, if he had securities there. The fact that securities were in Germany was held by the commission to establish that the securities were subject to the exceptional war measures, provided they were in Germany on November 10, 1917, when the exceptional war measures went into effect. And then the next step of the claimant was to establish that the exceptional war measure was the proximate cause of his loss. That was the rule that was also established by the Anglo-German Mixed Arbitral Tribunal and the other arbitral tribuanls. To do that he would have to establish facts and circumstances from which the commission could draw the reasonable inference that but for the exceptional war measures of

Germany he would have withdrawn his securities from Germany for the purpose of sale or exchange.

The CHAIRMAN. In other words, he could have gotten them out?

Mr. BONYNGE. Yes. But if he had his securities there, if he had them there on deposit with the agreement, as Judge Parker referred to, that they were to remain there to the close of the war, he would not be entitled to recover damages for the reason that the exceptional war measure could not in those circumstances be established as the proximate cause of the loss.

Senator REED of Pennsylvania. That is the extreme case. In the average case that must have been a very difficult thing to prove.

Mr. BONYNGE. It was a difficult thing to prove. But if you succeeded in establishing facts and circumstances from which the commission could draw the reasonable inference, that was sufficient. Of course there was an opportunity between April 6, 1917, when the war broke out, and November 10, 1917, when the exceptional war measures were passed affecting securities, when as American national could, if he wanted to, theoretically at least, get his securities out. There was no specific exceptional war measure in effect during that period which prohibits taking their securities out of Germany. After the expiration of the war he still had an opportunity to take them out, because the exceptional war measures expired January 10, 1920, and if he made no effort during that time to take them out, and voluntarily left his bonds over there, it was reasonable for the commission to conclude that in the absence of exceptional war measures he would have been content to leave them there.

Senator COUZENS. Let me give this illustration: Assume an industrial——

Mr. BONYNGE (interposing). A German industrial?

Senator COUZENS (continuing). A German industrial issued a bond on his property in 1913, due in 1923.

Mr. BONYNGE. Yes.

Senator COUZENS. And one paid for that bond on the basis of 24 cents to the mark.

Mr. BONYNGE. Yes.

Senator COUZENS. What would he get in 1923 for his investment? Depreciated marks?

Mr. BONYNGE. So far as Germany is concerned; yes.

Senator MCLEAN. The German citizens would be treated the same way.

Mr. BONYNGE. The German citizens would be treated the same way; yes. Anybody would be treated the same way. Of course, as to the coupons that matured on the bond during the war, they would be debts and would be valorized at the rated of 16 cents; but, the principal on the bond not maturing until 1923, the claim for the principal as a debt could not be allowed under the terms of the treaty.

Senator COUZENS. In that case we had no jurisdiction, and could not claim the pre-war rate.

Senator REED of Pennsylvania. Unless the owner could prove that he could not have withdrawn his bond or security for the purpose of sale.

Mr. BONYNGE. Unless he had the bond in Germany and it was subjected to the exceptional war measures. Then he did not recover the value of the bond. He could only recover the difference between

the market value of the security at the time when the exceptional war measure was applied and when the exceptional war measure ceased to apply to it. The difference was the damage, and for that he got his award. Those are the two classes of claims.

Senator REED of Pennsylvania. Let us just finish with this illustration. So that if the person mentioned by Senator Couzens had tried to get his bonds out of Germany for the purpose of selling them, say, in 1919, and could prove that to the satisfaction of the commission—and, of course, having tried he would surely have failed, because of the German control——

Mr. BONYNGE (interposing). Yes, sir.

Senator REED of Pennsylvania (continuing). Then the commission would make an award to him in dollars, equal to the difference between the value of that security in November, 1917——

Mr BONYNGE (interposing). Yes; if it was there at that time.

Senator REED of Pennsylvania (continuing). And its value in January or February of 1920.

Mr. BONYNGE. Exactly.

Senator COUZENS. Then he would have been in a more fortunate position had he had the bond in this country. If an American national had kept a bond in this country in a vault he would not have been in as unfortunate position as if it was in Germany?

Mr. BONYNGE. No; because if he left it here in a safety vault, it would not be subjected to the German exceptional war measure. If he did not feel like speculating on the result of the war, he could sell his bond. But if he wanted to keep it here to await the result of the war, to see whether Germany was successful or not, he did so at his own risk.

Senator COUZENS. That is a speculation. I am assuming that a man buys a bond and puts it in his vault until 1923, and then takes it out.

Mr. BONYNGE. Yes; but when the government that issued the bond gets into a war, while originally the holder may have bought the bond for an investment, it becomes more or less speculative as to what it will be worth when the war is over, depending on whether the government that issued the bond wins the war or loses it.

Senator KING. Take the illustration instanced by the Senator, and take some big steel company over there that was, during the war, solvent and after the war was solvent, and since that time has increased its assets, is it exempt from the obligations that matured in 1924 and 1925 because of the treaty?

Mr. BONYNGE. Not only because of the treaty but because of the decisions of the Supreme Court of the United States. If the bond is payable in marks, according to the decision of the Supreme Court of the United States all the holder is entitled to is marks.

Senator COUZENS. Gold marks?

Mr. BONYNGE. No.

Senator COUZENS. He would have been if the bond had stipulated gold marks?

Mr. BONYNGE. That is not the way the bonds were issued.

Senator COUZENS. Well, some of our American bonds are issued stating they are payable in gold dollars and some just dollars.

Mr. BONYNGE. Exactly. We have some Austrian bonds that were issued payable in gold, and we are contending for the gold value on

those. And, if it was a German bond payable in gold, it would be a different proposition.

Senator COUZENS. It was not my assumption—Senator King has raised the point. For instance, if it was an industrial issued a bond in 1914, he could now wipe that entire bond issue out, could he not?

Mr. BONYNGE. Unquestionably; yes.

The CHAIRMAN. I was in Munich this last year, and I saw a bond issue of $25,000,000 wiped out for $16.25; completely wiped out and paid.

Mr. BONYNGE. That is something the commission was not responsible for.

Senator KING. Take another case, the same industrial instanced by the Senator from Michigan. If instead of being payable in marks, suppose it were payable in Reischsmarks—the Reischsmark is what now?

Mr. BONYNGE. 23.82.

Senator KING. If it were payable in marks, would not the industrialist now have to pay in those marks?

Senator MCLEAN. No.

Mr. BONYNGE. I think by some domestic legislation of Germany a bond payable in paper marks is revalued in Reischsmarks at the rate fixed by the German legislation. Of course, that is something I have no reason to familiarize myself with, except as I have heard it discussed and mentioned in the public press.

Senator REED of Pennsylvania. That is a different unit of currency altogether.

Mr. BONYNGE. Yes; and the new legislation provides that the old currency shall be valorized at some fixed rate of exchange.

Senator King. So by legislation they have wiped out the creditor class over there.

Mr. BONYNGE. They have, absolutely.

Senator COUZENS. And her nationals are in the same class?

Mr. BONYNGE. Absolutely.

Senator King. If they were fortunate enough to have owned any of those securities.

Mr. BONYNGE. Most of our claimants think they are entitled to get back the amount mentioned in the bonds or the amount they paid for them. Many of these claims are based, as Judge Parker has said, on bonds that were purchased between 1917 and 1919. The people who bought the war bonds were speculating. They either bought them because they were patriotic Germans—Americans now, but naturalized; native Germans, who bought them to help the Fatherland; or they bought them for a speculation. Now, if they bought them to help Germany they ought not to complain, because Germany has lost and they will have to lose. If they bought them for speculation, they are in the same position as anybody else that takes a chance.

Senator KING. Mr. Bonynge, I would be glad to get your opinion with regard to these neutral corporations who appeared before the committee the first day of the hearings. For instance, a number of the Swiss corporations that were seized, their physical assets were seized in the United States and are in the hands of the Alien Property Custodian, and the question arises, what disposition is to be made of those claims. Do you remember the statements?

Mr. BONYNGE. No. Of course, that is something that does not come to me as agent at all. I have nothing to do with those. What the American Alien Property Custodian seized I have nothing to do with. That is for the Alien Property Custodian.

Senator REED of Pennsylvania. I think we will have to ask Senator Sutherland about that.

Mr. BONYNGE. Yes; Senator Sutherland will know much more about that than I do.

The CHAIRMAN. Is that all, Mr Bonynge?

Mr. BONYNGE. I want to refer to the debts a little further than what Judge Parker has said.

The CHAIRMAN. Yes.

Senator REED of Pennsylvania. Have you any claims from the holders of mark currency?

Mr. BONYNGE. Yes; among these late claims, there are many of them from people who bought marks after the war was over, and now they have filed their claims for them. We have had a few claims that have come before the commission on marks and they have been disallowed.

Senator REED of Pennsylvania. Have you been able to make the average holders of them understand why they are disallowed?

Mr. BONYNGE. No, sir; that is hopeless; to explain to the average claimant the intricacies of this treaty and the character of claims that can be allowed, the proof required in support of the different classes of the claims, is impossible. The number of letters that I have written to claimants and the length of those letters trying to explain to them what possible claims they would have and what they would have to prove to establish their claims is astounding.

Senator REED of Pennsylvania. We in Congress, of course, have had many letters of that sort.

Mr. BONYNGE. Yes.

Senator REED of Pennsylvania. And we have had great difficulty in explaining it also.

Mr. BONYNGE. Yes; it is hopeless. I have tried to do it, but I must confess it is practically hopeless to get the average claimant to understand it. Of course, we can not expect to satisfy all claimants. No court can satisfy all litigants, and no Congressman can satisfy all of his constitutents, and in saying so I speak from experience.

The CHAIRMAN. I do not think any marks were purchased after the war except as a speculation. I know some of my very dear friends said that Germany was a good country and they were going to buy these marks and try to make some money on them.

Mr. BONYNGE. Yes. Now, may I proceed, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. BONYNGE. Senator Couzens referred to the Army of Occupation and that brought to my mind that in making the estimate as to the amount of claims to be considered, I have not included the claim for the costs of the Army of Occupation, although notice of this claim was given to the Commission and the German Agent. I have assumed the Government would not present that claim to the Mixed Claims Commission, for adjudication, as other provision has been made for its payment. I have not included that claim in my estimate; if that is to be added, the figures I have given will have to be

changed, so that there should be added to my estimate the amount of that claim, $225,000,000, less what has been paid thereon.

Senator REED of Pennsylvania. It stands to reason, does it not, Mr. Bonynge, that the Government would not present that claim to the Mixed Claims Commission at this time when it is getting $13,000,000 a year on account of that now?

Mr. BONYNGE. I would not think it would be presented.

Now, I would like to refer to the Austrian amendment that was mentioned this morning. The situation with reference to the Austrian claims and the claims against the German Government is entirely different. In the German case, as explained to you, we had the agreement that notwithstanding the fact that we did not adopt the clearing-office system, Germany agreed to the valorization of mark debts at 16 cents per mark. We have no such agreement with Austria and Hungary. So as to Austria and Hungary the Commission has held as to kronen debts that American claimants are only to be awarded at this time interlocutory judgments in kronen for the amount of the debts due them. If it was contracted in gold kronen, of course the interlocutory award will be in gold kronen; if it was in pounds sterling, the award will be in pounds sterling. The question whether the kronen judgments are to be valorized at the prewar rate of exchange is left to Congress. If the Congress applies the property in the possession of the Alien Property Custodian which was seized from the Austrian and Hungarian nationals to the payment of those debts, then, under the decision of the Commissioner, w e are entitled to have those debts valorized at the prewar rate of exchange, which in the case of Austria and Hungary, was 9.36 cents per krone. We did not get into the war with Austria until December, 1917; and between April, 1917, and December, 1917, the krone had depreciated in value. I believe the normal value of it was somewhere about 20 cents.

Senator REED of Pennsylvania. Fourteen cents, was it not?

Mr. BONYNGE. Oh, no; 20.26 cents, to the krone, I think. The kronen had already depreciated more than one-half when we got into the war with Austria. And the average pre-war rate of exchange prevailing on the kronen in November, 1917, was less than one-half of the normal value of the kronen.

Senator REED of Pennsylvania. Oh, yes; the unit of their currency is now the schilling, worth about 14 cents, and that is what I had in mind.

Mr. BONYNGE. Yes; that is a new currency they have adopted. So the best we could get would be 9.36 per krone, and we will not get that unless Congress applies the property now in the possession of the Alien Property Custodian to the payment of these debts; otherwise we will have awards for kronen which are not worth anything whatever.

Now, to obviate that, as Judge Parker has stated, the Austrian Government has indicated that it is ready to deposit an amount of money to be held by the Treasury, and all the property to be held until the commissioner certifies to the Secretary of the Treasury that there has been deposited with him a sufficient amount of money to cover and pay all interlocutory awards made by the Tripartite Commission against Austria at such rate of exchange as the commissioner may fix. In other words, it would leave to the commis-

sioner the right, which, of course, he is not seeking but if imposed upon him he would undoubtedly exercise, to determine the rate of exchange at which these debts are to be valorized.

Now, if that should be done, gentlemen, my objection to it would be this: That the rate ought to be fixed in advance. As Judge Parker has explained to you, the Austrian nationals and Hungarian nationals, as well as their Governments, in some instances have been negotiating settlements with American nationals of their claims. They are getting the best settlement they can get with each individual national. They are private debts, and there is nothing in the treaty, since we did not adopt the clearing-office system, to prevent the settlement of those debts between the nationals. They go to our national and say to him, "Why, you have an award for so many kronen. Congress will never appropriate the property of Austrian nationals to pay these debts, and your award is practically worthless. We desire, however, to dispose of this matter in some friendly way, and we are willing to settle with you," and they offer whatever they think they can get by way of settlement. That places the American national at a very great disadvantage in negotiating for a settlement of his claim. If the rate were to fixed now, either by Congress in the bill, or to provide, if it is to be left to the commissioner, that the commissioner shall within a certain time after the passage of the act fix a rate at which these debts shall be valorized, it would be a great protection to the American nationals who have claims. As it is I think the committee can see they are at a very great disadvantage.

Senator KING. The uncertainty beats down the American claimant.

Mr. BONYNGE. The uncertainty beats down the American claimant. And if you leave it uncertain, and Congress does not apply this property, they will have the additional argument that Congress did not apply the property and the commissioner can not do anything under the treaty except to award kronen, and therefore your krone is valueless and we will give you one cent for your krone.

Senator REED of Pennsylvania. Is that equally true of the mark?

Mr. BONYNGE. Yes. We found——

Senator MCLEAN (interposing). Could not the agents representing the two parties in interest come to an agreement as to the percentage to be allowed, the same as they did with regard to the mark?

Mr. BONYNGE. No; we attempted to do that. I went over to Austria and went to Hungary and saw the officials there and attempted to do it. Judge Parker explained to you why the Government was unable to make a proposition that I would recommend to the Secretary of State. They have agreements with other countries at a very low rate of exchange. In some cases the Governments do not have enough property to cover their debts. In those cases it was to their advantage to take the most favorable agreement they could get. But they have in their treaty the most-favored-nation clause, and they have the larger amounts, whereas our claims are quite insignificant in amount.

The CHAIRMAN. Supposing Congress should fix the rate?

Mr. BONYNGE. If Congress fixes the rate, that would relieve them of any embarrassment in the matter, and would be of very great advantage to the American claimant, and then all claims would be settled on the same basis. As it is now all claims are settled accord-

ing to the necessities of the claimant; some at one rate, and some at another rate.

The CHAIRMAN. Is that all?

Mr. BONYNGE. Just one other matter with reference to the Austrian claims. The American agent does not concede that there were not war measures in Austria and Hungary affecting the American claimants. We have two cases pending before the commission in which we set forth decrees of Austria and Hungary applying to enemies generally, and which we insist became effective toward us when we became an enemy of theirs. They, on the other hand, claim that they did not enter any decrees or pass any measures which prevented the Austrian debtor from paying his American creditor. We, on the other hand, are claiming that there were such measures and decrees. And that matter has not yet been determined by the commission. We have filed our brief, and they have not yet filed their briefs.

I think that is all.

The CHAIRMAN. Are they any other questions?

Mr. BONYNGE. Just before I conclude, if I may make just a very brief statement. There have been suggestions of delay on the part of the commission. I desire to call the attention of the committee to the fact that it is now a little over four years since I was appointed American agent. That was within a few months after the organization of the commission, and while there had been a number of cases prepared for presentation to the commission no case had been passed upon by the commission. In a little over four years the commission has disposed of all but 216 claims out of a total of 12,500, involving an aggregate total of $1,500,000,000. I think it not unfair, in the light of suggestions as to delays, to compare that record with the record of any other international tribunal.

I submit, gentlemen, there never has been an international tribunal that has had as many claims before it, or claims in as large amounts as are involved in the claims before the German-American commission, and none in which the work has been completed in as short a time as this commission has completed its work, and at as small expense to the Government to accomplish the work. My force has been very limited. I have had a small force, and a poorly paid force, to do this work. It has only been possible to accomplish these results by reason of the loyal support of my assistants and staff and the cooperation of all of the parties concerned. The umpire, the German agent, the American commissioner, the German commissioner, and all parties have cooperated to the fullest extent in expediting the work and in endeavoring to adjudicate the claims fairly and justly between the two Governments. The German agent has shown a very liberal spirit in dealing with these matters. Contrary to the usual custom in international dealings, instead of fighting out each claim, both agents have sought to develop the facts and to bring out the truth on each side. I have not hesitated at any time to lay before the German agent all the evidence I had on my side, and he frankly has given me the evidence he could obtain in order to establish what the facts were, and then we have left the matter to the commission. Frequently we have been unable to agree and we have in those cases presented our contentions earnestly and vigorously to the commission for determination.

I will say with reference to estate claims particularly it would have been impossible in most cases to establish the claim on the evidence the claimant presented. Generally the claimant knew that he was interested in some estate in Germany, that some relative had died, but he did not know what his interest was. He was not in many cases financially able to employ lawyers to ascertain those facts. The German agent would get a report from the executor, or whoever had charge of the estate, showing what the assets were, when it was ready for distribution, and how much the claimant was entitled to. With that information the American agent was enabled in many cases to obtain an award which otherwise could not have been obtained.

Now, that has been the spirit of friendliness and the desire on the part of all concerned in this work. That is a unique situation, I think, in the history of international arbitrations. I do not think that has ever before occurred, and I think the committee should know it.

May I also add that as American agent I have believed it to be my duty not to present a claim that did not appear to be meritorious and within the provisions of the treaty. The United States Government only desires to present such claims against other Governments as it believes it is entitled to recover. As its agent I have acted on that principle and have considered it as much my duty to see that claims without foundation are not presented as to represent and advocate on their behalf to the best of my ability the just and meritorious claims of American nationals.

I am very much obliged to you, Senators, for this opportunity to make this explanation, and for your kind consideration

The CHAIRMAN. Gentlemen of the committee, Senator Howell is here and desires to make a statement to the committee. Senator Howell, you may proceed.

STATEMENT OF HON. ROBERT B. HOWELL, A SENATOR IN THE CONGRESS OF THE UNITED STATES FROM NEBRASKA

Senator HOWELL. Mr. Chairman, I do not care about a record of my statement.

The CHAIRMAN. We may have to refer to it.

Senator COUZENS. I think it should be taken down in shorthand and transcribed so the committee may have a record of it.

Senator HOWELL. According to my calculations the claims that ultimately will have been adjudicated in favor of American citizens and the United States Government by the Mixed Claims Commission, will amount on the first day of September next to a total of $253,500,000 in round figures.

The CHAIRMAN. That is, including interest?

Senator HOWELL. Including everything.

The CHAIRMAN. That is close enough, but the amount as testified to here is $252,000,000.

Senator HOWELL. The only payment that the Government will receive from its share of the amounts obtained under the Dawes settlement, will be 2¼ per cent of $10,700,000 as a maximum per annum.

The CHAIRMAN. They may not receive that.

Senator HOWELL. That is true, but assume that we receive the maximum 5 per cent interest upon the amount of these claims, $12,600,000 exceeds the 2¼ per cent we will receive from the Dawes commission settlement. Therefore, these claims would never be paid unless somebody contributes. It is proposed that without interest we take some $25,000,000 of unallocated interest accruing prior to 1923 from the moneys in the hands of the Alien Property Custodian. Then it is estimated that by next September there will be some $23,000,000 accumulated from the 2¼ per cent. Subtracting these two items from $253,500,000, leaves $205,500,000 upon which 5 per cent interest will have to be paid. Deducting 5 per cent interest from this amount, from this $10,700,000 maximum, and we have left only about $425,000, to apply upon principal.

The CHAIRMAN. Provided we do not collect any interest from any other source. For instance, on property that we are holding for Germany now, interest is paid upon all of that.

Senator HOWELL. Provided we do not pay it out?

The CHAIRMAN. Yes.

Senator HOWELL. You take into account the German ships?

The CHAIRMAN. Yes.

Senator HOWELL. If you take into account the ships, yes. But the point that I wanted to make is this: That there can be no payments on account of this principal outside of these two amounts and excluding whatever is allowed for ships, unless it comes out of the United States Treasury in some manner. The question is, how much shall ultimately come out of the United States Treasury.

There are two classes of claims wherein judgments have been handed down by the Mixed Claims Commission:

1. One class of claims is where there has been an actual loss that has caused hardship.

2. Another class of claims is one that means simply paying profits to some one.

Now, I think we ought to make a clear distinction between these two classes of claims. And so far as any profits are concerned upon business transactions to which any claimants will be entitled because of such judgments, that those profits should not be paid claimants until Germany pays us our 2¼ per cent for a sufficient length of time to afford the necessary funds. I think that these profits and the Government's claims should go into the same class and be paid last, if such is to be the treatment of the Government's claims.

Senator HARRISON. Would not the Mixed Claims Commission have to go over the evidence again in order to find out what part was profit and what part was not profit?

Senator HOWELL. No; this particular class of claims is not difficult to determine.

Senator REED of Pennsylvania. Under this plan all American claims of that sort will be paid within three years, it is estimated.

Senator HOWELL. Yes.

Senator KING. The Government's and all?

Senator REED of Pennsylvania. No; excluding the Governmental claims.

Senator HOWELL. Yes. But it either means ultimate confiscation of the property of individuals or ultimately going to the Treasury of

the United States and preventing such confiscation, which in turn would mean confiscation of assets of our taxpayers.

The CHAIRMAN. Would you consider interest that may be allowed upon money as profits?

Senator HOWELL. No. To what I am referring now does not include interest at all. That is, interest upon claims which resulted from loss and hardship. But I am referring to a certain class of claims that have been made by insurance companies on the ground that they were subrogated to the rights of their insured.

The facts involve marine insurance written during the period of the war. There were some 45 companies which wrote premiums amounting to about $248,000,000. Of course, I am speaking in round numbers. Out of the premiums received, they paid all of their losses and had about 31 per cent of their premiums left. Out of the remaining premiums they paid their expenses and were short about $250,000. In other words, the expenses they charged up were $250,000 more than the 31 per cent or what remained of their premiums.

Senator KING. Out of the 31 per cent?

Senator HOWELL. Yes. These insurance companies have gone before the Mixed Claims Commission and have secured awards amounting to about $35,000,000 and interest thereon brings the total up to $47,000,000.

Senator COUZENS. That is what you speak of as constituting profits?

Senator HOWELL. That is profit, absolute profit, because they practically paid all losses and expenses out of the premiums collected. Now, I say all well and good; let us permit the insurance companies to have this profit if and when Germany pays it. But I do not think we ought to adopt any plan whereby ultimately the United States Treasury may pay this profit. I anticipate that, under the provisions of the pending bill, that is what will ultimately take place. And I anticipate this, for the reason that this country can not afford to confiscate private property of any German national as a result of the war.

Senator REED of Pennsylvania. Why not, Senator Howell?

Senator HOWELL. First, because every dollar of private property that was taken over by the German Government belonging to Americans, in Germany, was immediately turned back at the close of the war.

I was in Europe in 1921, and met the vice president of the New York Life Insurance Company, who called my attention to this fact, and he added: We own a building in Berlin. When the war came on that building was taken over. When the war closed it was returned to us, with an accurate accounting of every dollar received and expended. And he added: That the building had been administered as well as the company could have administered it.

And there is not a claim that I know of that was filed with the Mixed Claims Commission for property seized in Germany by the German Government and sequestered as we sequestered property here, that has not been returned and that was not returned promptly.

Again, we are tremendously interested in the principle of international law involved. We have been making tremendous foreign loans, and this country of all others now, on account of the future,

should be scrupulous about observing that rule of international law which became generally recognized during the nineteenth century, to wit, that the private propery of enemy subjects was to be respected; that Governments do not make war upon individuals, but upon Governments.

Senator REED of Pennsylvania. That has been pretty generally ignored by our allies since then.

Senator HOWELL. That is true; but I think, so far as we are concerned, it would be the worst kind of policy for us, in view of our creditor situation, to acquiesce in any such attitude.

Senator KING. Have you taken into account this fact; I have made much the same argument that you are making now, from the floor of the Senate many times, and especially in 1920 when I offered a bill favoring the restoration of property to German nationals. By the terms of the Treaty of Versailles, and they were incorporated in the Berlin Treaty, the German Government said to us: We seized this property of our nationals which is in your possession. We impressed it with the power of our sovereign Government. We expropriated its use and perhaps its corpus and as to that we do not know, but at any rate its use for an indefinite period. Under the Ebert government they had the right to exercise the power of eminent domain, and they did it. And they made Senator Sutherland, Alien Property Custodian, their trustee, and he not only holds under the law of sequestration but he holds under the Berlin Treaty, and he becomes the trustee for Germany. We have no right to return this property to the nationals because Germany has by the exercise of the power of eminent domain laid her hands upon it and told us to hold it until she makes satisfactory arrangements to pay American nationals. So we have to follow Germany any way.

Senator HOWELL. The argument that I make is this: That ultimately we will return all this property, no matter what we keep. I am speaking of this $25,000,000 unallocated interest, and the 50 per cent of whatever the German ships may be valued at, and the 20 per cent of alien property funds that we hold out, we will ultimately return all of it.

Senator KING. If Germany pays.

Senator HOWELL. Whether she pays or not, in my opinion, we will ultimately return it, and I think we ought to keep that in mind, and remember that such eventualities are certain, and that hence we ought to wait and not pay these insurance claims until such time as all other claims are paid and there is no chance of such insurance profit coming out of the National Treasury.

The CHAIRMAN. What is the difference between an interest profit and a profit that was made by the insurance companies?

Senator HOWELL. The insurance companies are in the insurance business.

The CHAIRMAN. So is the man who lends money in business. And the interest that we receive that goes into this fund is from institutions in the United States doing business under receivers.

Senator HOWELL. But the insurance companies are in the business of anticipating losses. Their whole existence is based upon the fact that losses are liable to occur and people will pay premiums to be protected therefrom. They collect the necessary premiums, as they did in this case, enough to pay all losses and expenses, and they

never should be able to collect profits from the United States Treasury. If they can collect these profits from Germany, all well and good, but they should wait until Germany pays.

The CHAIRMAN. All others are collecting profits.

Senator HOWELL. You are speaking now about interest?

The CHAIRMAN. Well, that is the same thing.

Senator HOWELL. No, interest is a different matter. Interest is usually adjudged to a man who is given an award. I am talking about possible profits for these insurance companies.

The CHAIRMAN. I have not had a single solitary representative of an insurance company to speak to me or to write a letter to me.

Senator KING. But their attorneys have been very active.

The CHAIRMAN. No, or at least they have not come to me.

Senator HOWELL. I think I have stated all I have to say at this time.

The CHAIRMAN. We thank you, Senator Howell, for coming over.

Senator HOWELL. Mr. Chairman, I will take the liberty of submitting an amendment to the bill under consideration.

The CHAIRMAN. Suppose you do that, and it will be referred to this committee for consideration.

STATEMENT OF HON. HOWARD SUTHERLAND, ALIEN PROPERTY CUSTODIAN, WASHINGTON, D. C.

The CHAIRMAN. Now, Senator Sutherland, is there anything you want to put in; or would it be along the lines you stated when here before?

Mr. SUTHERLAND. It would be along the lines I explained to the committee a year ago, unless you have some particular point in mind.

The CHAIRMAN. Are there any suggestions that you wish to make that were not made when we had the bill under consideration a year ago?

Mr. SUTHERLAND. Some question was raised within the last few days about these Swiss companies.

The CHAIRMAN. You may make any suggestions you wish to offer.

Mr. SUTHERLAND. With reference to these Swiss companies, about which Senator King asked, there were three companies taken over: Swiss National Insurance Co., Sigg-Fehr Co. and the Internationale Nahungs Gunsmetalls Acktiengesellschaft. I wrote you a letter on the 7th of January, 1927, a copy of which I submit here and which discloses the situation:

JANUARY 7, 1927.

Hon. REED SMOOT,
Chairman Senate Finance Committee, Senate Office Building,
Washington, D. C.

MY DEAR SENATOR: I have had a careful search made of the records of this office respecting the matter mentioned in your letter of January 5, 1927. Our records disclose that the Alien Property Custodian seized property belonging to three Swiss corporations, to wit:

(*a*) Swiss National Insurance Co.
(*b*) Sigg-Fehr Co.
(*c*) Internationale Nahungs Gunsmetalls Acktiengesellschaft.

With reference to the return of property held by the custodian in the name of and as belonging to the aforesaid corporations, you are advised that the Supreme Court of the United States held that the property of the Swiss National Insurance Co. was not returnable to said Swiss corporation because the corporation had

been trading with Germany during the war in contravention of the express terms of the trading with the enemy act. As to the Sigg-Fehr Co., our records show that this company was a Swiss corporation, but that much of its stock was held by German nationals and it, too, had been trading with the enemy during the war. As to the Internationale Nahungs Gunsmetalls Acktiengesellschaft, our records show that this was a Swiss corporation, all of whose stock was owned by four German nationals residing in Ludwigsburg, Germany, and was not returnable. Claim was filed with the Alien Property Custodian by this Swiss corporation and in due course submitted to the Department of Justice. The claim was disallowed by the Department of Justice on the grounds instanced hereinbefore.

If an amendment is submitted to your committee by the Legation of Switzerland with respect to the return of property alleged to belong to Swiss corporations, this office would like to be apprized of the tenor and purpose of said amendment in order that we may submit data with reference thereto.

Very truly yours,

HOWARD SUTHERLAND,
Alien Property Custodian.

And, Mr. Chairman, if an amendment is submitted with reference to these companies, I should like to go over it and see just what it does for these properties. I will say in connection with the Sigg-Fehr Co., mentioned in the letter to Chairman Smoot, that I have to-day been advised that a judgment has been obtained in the Supreme Court of the District of Columbia against the custodian, the effect of which will be to return to that company all the property held for it. I do not know how this decision will affect the other two companies, as the opinion has not been as yet made available.

Senator KING. Are there any other corporations in the same situation as these three? That is, corporations in other neutral countries?

Mr. SUTHERLAND. None that would come under that same category. You see Switzerland was so close that it was very convenient to utilize it as a base for enemy activities. Among the companies originally held was the American Metals Co., about which there has been a good deal of controversy and which was returned and which occasioned quite a good deal of disturbance.

Senator KING. The point I am trying to get is: Suppose that we should make an exception as to these three companies, and provide that the property of these corporations because they were judicial entities in a neutral country, should be restored to the owners, would it be a precedent that would require us to restore other properties to corporations?

Mr. SUTHERLAND. Yes.

The CHAIRMAN. We do not know just how far it might go.

Mr. SUTHERLAND. It would not seem to me that they are entitled to any special treatment apart from any other German-owned property located anywhere. We ought to keep the same percentage of money back and treat it the same as other German property, because it has been held that while they were nominally Swiss corporations, yet as a matter of fact they were enemy-owned corporations, and especially were transgressors under the trading with the enemy act.

Senator KING. In the case of one or two of these corporations, the names of which you have just furnished, were not a majority of the stockholders Swiss?

Mr. SUTHERLAND. No, it appears from the records in the case that that stock was owned almost entirely by German nationals.

Senator KING. I was told that the Swiss stockholders were more numerous than the German stockholders, and that the stockholders owned at least in two of these companies a majority of the stock.

Mr. SUTHERLAND. There may have been some later transfers made, but that does not appear, because if that were the case the property would have been returned, no doubt.,

The CHAIRMAN. It must have been done since the war if done at all.

Mr. SUTHERLAND. Yes, I would think so. But if that were the case the property would have been returned.

Senator KING. You say it would have been returned in that case?

Mr. SUTHERLAND. If it had been a Swiss corporation.

The CHAIRMAN. In that case it would not have been seized.

Mr. SUTHERLAND. Well, if it had been seized wrongfully and then it was determined that it was a normal Swiss corporation, of course it would have been handed back to them.

Senator KING. Suppose that a majority of the stockholders were Swiss; would you have restored their property?

Mr. SUTHERLAND. That would probably make some difference.

Senator KING. I mean if at the time of the seizure by the Alien Property Custodian the majority of the stockholders were Swiss, would the property have been returned?

Mr. SUTHERLAND. If as a matter of fact the corporation had been trading with the enemy it would have been treated under the trading with the enemy act as an enemy corporation.

The CHAIRMAN. And the corporations were trading with Germany?

Mr. SUTHERLAND. It was so determined.

Senator KING. And of course even in that case if you had sold the corporate assets you would have turned over to the Swiss stockholders their share of the assets.

Mr. SUTHERLAND. No. The property would still be held for the corporation.

The CHAIRMAN. Is there anything else?

Mr. SUTHERLAND. There is nothing else unless there is some statement you wanted me to make.

The CHAIRMAN. I do not think of any.

Mr. SUTHERLAND. There was one matter about which I wish to call attention, and that was in regard to suits: We have quite a large number of suits pending, some involving large interests and those of course have to be tried. While I am not sure that we would be prohibited from continuing with that litigation, and we are getting out of litigation as fast as we can, but where it is proper and right to still carry on the suits we should be clearly authorized to do so. Otherwise counsel representing the parties might go into the courts and say it is all over and we whould be out of court. I have an amendment here which sets this out.

The CHAIRMAN. Suppose you just leave that until we have the bill up for marking, and then you can come up and we will go over that with you.

Senator KING. The bill does not cut your head off right now.

Mr. SUTHERLAND. I understand.

Senator KING. It takes it along, but we do not want to go on indefinitely.

Mr. SUTHERLAND. No, but there might be some question if this bill is passed and the property is returnable, as to whether or not we could continue to prosecute those suits, some of which it is very necessary to proceed with. It will take a couple of years anyhow to

to get the most of this money out, but if you pass the bill promptly I will get the most of it out in very short order.

Senator KING. It occurred to me that we ought to amend the bill to provide that at the end of 18 months that the functions of your organization shall be carried on by the Treasury Department.

Mr. SUTHERLAND. I think that would at this time be unwise legislation. I am going to get rid of the work just as quick as we possibly can. When it gets down to a small matter it could be turned over to another department.

Senator KING. I think there is a disposition on the part of bureaus generally to continue themselves.

Mr. SUTHERLAND. I know there will not be any such disposition on my part. I want to get rid of it.

Senator KING. But you are only one of the bureau.

Mr. SUTHERLAND. Well, I do not think there will be any disposition of that kind on the part of anybody. We are going to get the most of this property all out within a year. Of course when it gets down to a small matter it could be handled as an adjunct of some department.

Senator KING. Should be transferred to the Treasury Department.

The CHAIRMAN. Just leave that amendment with the committee, and when the bill is up for consideration we may send for you.

Senator KING. I should like for Senator Sutherland to furnish a statement down to date showing the exact amount on hand.

Mr. SUTHERLAND. I have that here.

Senator KING. Right down to date?

Mr. SUTHERLAND. Yes. Here it is down to December 31, 1927.

The CHAIRMAN. Just put that in the record.

Mr. SUTHERLAND. All right.

(The statement referred to "Statement of trust property on hand and claims paid on various dates," is here made a part of the record, as follows:)

Statement by Alien Property Custodian of trust property on hand and claims paid on various dates

	Dec. 31, 1924	Dec. 31, 1925	Dec. 21, 1926	Dec. 31, 1927
Cash deposited with the Secretary of the Treasury:				
Invested	$169,428,594.89	$183,539,421.97	$179,107,676.74	$183,289,971.34
Uninvested	6,290,264.24	351,410.34	318,823.79	491,070.43
Total cash	175,718,859.13	183,890,832.31	179,426,500.53	183,781,041.77
Cash with depositaries	1,101,102.32	269,037.55	364,392.83	25,752.96
Stocks	53,812,297.41	47,627,067.55	42,775,423.52	43,121,948.90
Bonds other than investments made by the Secretary of the Treasury	33,874,021.88	32,227,276.10	30,568,656.15	30,175,833.16
Mortgages	3,504,793.62	3,361,652.34	2,010,551.23	1,882,582.57
Notes receivable	265,848.53	370,006.45	247,822.57	230,583.45
Real estate	4,446,805.40	3,643,611.70	3,570,207.93	3,165,817.08
Accounts receivable	756,383.43	618,227.71	685,797.00	563,440.60
Miscellaneous incorporated business and estates in liquidation and remainderman accounts	3,079,561.87	2,623,192.67	558,101.04	462,789.73
Total	276,559,673.59	274,630,904.38	260,207,452.80	263,409,790.22
Claims paid to date, including income and interest under section 23	280,292,799.25	304,104,730.37	334,795,615.76	352,289,107.04
Total property accounted for	556,852,472.84	578,735,634.75	595,003,068.56	615,698,897.26

The CHAIRMAN. I have a letter here from Mr. W. C. Riordan, Baltimore, and he presents a statement relative to certain provisions of the bill and asks that it be incorporated in the record. We will do that at this time [reading]:

BALTIMORE, MD.,
January 23, 1928.

From: William C. Riordan, member firm of Lane, Rowell & Co., 109 E. Redwood Street, Baltimore, Md.
To: Chairman Senate Finance Committee, United States Senate, Washington, D. C.
Subject: Alien property.

On behalf of numerous American investors residing in almost every State of the United States, who are owners of securities of German industrial corporations and German banks, I respectfully beg to submit the following views and suggestions received by this company for the consideration of your committee:

1. SEIZED PRIVATE PROPERTY SHOULD BE RETURBED, OR ADEQUATE DAMAGES AWARDED, WITHOUT FURTHER DELAY

In contending that seized private property should be returned, or adequate damages awarded, without further delay in pursuance of the traditional principle of this country to respect private property rights, it is fully appreciated that the committee is earnestly striving toward that conclusion.

As a matter of fact, the United States Government has held this property for more than ten years, and it is respectfully contended that settlement of the problem should not longer be delayed. Many American investors have purchased securities of German industrial corporations, and their interests are affected by the return of seized property. These investments have been substantial in ship companies and banks, and in such industrials as Chemische Fabrik von Heyden A. G., Stettiner Chamotte Fabrik A. G. and Orenstein & Koppel A. G.

There is no doubt about the vast economic advantages to many interests in this country resulting from a prompt and equitable settlement of the seized property problem. For instance, since the stabilization of German currency in 1924, that country has become the largest foreign customer for American automobiles. During the past two years, Germany has become our largest customer for cotton and copper.

A marked similarity may be noticed in our relations with Germany and the allied countries who during the war used funds borrowed here to pay for war materials and supplies purchased in this country. Proceeds of American loans to German industrial corporations have been utilized largely in the purchase of supplies and materials in the American market. This buying in turn has necessarily developed and strengthened American participation in the German trade market.

2. SHIP CLAIMS SHOULD BE SETTLED ON THE BASIS OF ACTUAL, RATHER THAN ARBITRARY, VALUE OF PROPERTIES

An important class of the seized properties comprise privately-owned ships taken over by this Government for the prosecution of the war, and numerous American investors in securities of the former owning companies are affected by whatever settlement may be made of this part of the problem.

Compensation for the seized ship properties should be commensurate with the value at the time of seizure to keep faith with the intention and promise to indemnify fairly against private losses as the result of seizure by this Government of private shipping property during the period of national emergency. It is respectfully contended that such claims should be settled on the basis of actual, rather than any arbitrary, value at the time of seizure. It would be unfair and contrary to long-established American principles of indemnification to base such awards for damages upon values existing either before or after the time of actual seizure. Settlement of such claims should be based upon actual fact, and the principal and interest of such awards computed accordingly.

It is a fact that the value of property of German shipping companies at the time of seizure by this Government was many times the amount as fixed by the Naval Board of Appraisers. If the value of the seized ships were to be computed on a basis coincident with the date of the signing of the Peace Treaty, when the

national emergency had ended and the ships may have been returned, the value of the ships would have been many millions of dollars more than the value that probably would be fixed by any arbiter provided for that purpose.

It may be said that due to a shortage of world shipping in 1919, 1920, and 1921, shipping commanded extremely high prices, and had the German ships been released at the termination of the war, that tonnage would have earned for the owners many millions of dollars—a loss which can not be redeemed by any arbiter appointed to fix actual damages sustained by reason of the seizure of private shipping property.

3. THERE SHOULD BE NO DISCRIMINATION AGAINST SHIPPING COMPANIES IN THE SETTLEMENT OF CLAIMS FOR ACTUAL DAMAGES

It is contended that there is no reason either real or implied, to discriminate against the shipping companies in the settlement of claims for actual damages sustained in the seizure of private property by this Government. The fact that the value of such properties was great, or that losses and damages suffered exceeded those in other classes of seized property makes all the more necessary that the same basis of settlement shall be applied to all classes of claimants without distinction. Losses were actually sustained by owning individuals, whether they owned seized properties individually or collectively through the medium of corporations.

As an example of the unfairness of treating the ship claims on any basis of settlement different from that applying to other classes of property, it may be pointed out that large amounts of real estate and stock, such as shares of the Western Maryland Railroad, Baltimore & Ohio Railroad, the Pennsylvania Railroad, and bonds formerly owned by German nationals, seized by this Government and now held by the Alien Property Custodian, generally have greatly appreciated in value during the past 10 years in which the Government has retained possession of that property or the proceeds from the sale of such property.

During the same 10-year period, however, the value of ships has decreased greatly. The retention of such property by the Government for the same period has been to reduce its value to a negligible fraction of its value when seized by the Government. It is evident that there is no good reason why any portion of the ship property should be retained and a large percentage of property awarded to other claimants. The test of actual loss is as poignant in one case as it is in the other.

Taking the case of the North German Lloyd Co. as an example, the Nava Board of Appraisers allowed the sum of $12,571,230, for 235,644 tons of shipping. The average age of these ships at the time of seizure was 15½ years. It is contended that it is neither logical nor fair to force that value upon claimants whose property when seized was threefold more valuable. It is not believed that any shipping company, even at the present time when tonnage values are greatly below values existing at the time of seizure of German ship properties, would show on its balance sheets shipping worth as little as $50 per gross ton. Using the International Mercantile Marine as a typical example, that company carries its ships on its balance sheet at approximately $140 per ton, and the average life of its ships figured to be 16 years. In comparison, the Naval Board of Appraisers allowed the Lloyd company less than $50 per ton for its ships, and averaging age of 15½ years.

It is manifestly unfair to deduct any amount from the allowance for ships for use in a "pool" to provide for the payment of American claims. Instead, it would be less unfair to make such deductions from the value of property which had appreciated in value, such as railroad shares and bonds which have multiplied in value and which have unceasingly paid interest on the private funds invested.

A striking example of the injustice of deducting 50 per cent from the value of ship claims and but 20 per cent from the claims of other claimants, may be found in the case of the Stettiner Chamotte Fabrik C. G. The capital of the American branch, known as the Didier March Co. at Keasby, was $1,150,000. The amount awarded by the Mixed Claims Commission for this property was $837,486.14. While the House bill provides 80 per cent to be paid out of this amount, it allows but 50 per cent to be paid for ships worth many times the appraised value of those properties.

Heavy losses already have been sustained in the sale of seized properties by this Government. Specific cases may be cited in the dock properties and office buildings of the North German Lloyd and Hamburg-American companies, and

the plant of the Orenstein & Koppel at Koppel, Pa., in which properties were sold at prices far below their real worth. The North German Lloyd, for example, is credited on the books of the Alien Property Custodian with but $2,200,000 for its Hudson River piers and Hoboken docks, and other properties, out of a minimum valuation of $12,000,000.

However, these mistakes can not be undone at this late date, but it is in the power of your committee to attempt to right the wrongs to the owners of other German property upon which the value has not yet been definitely established. Even though a larger appropriation is necessary to compensate the owners of ships, it will be to our future advantage to deal with the shipping companies in a manner symbolic with American ideals of justice. A proper valuation should be established for these ships based upon their value at the time they should have been released and put back into service by their respective owners.

If the opoinion of your committee is that the valuation of German ships as fixed by the Naval Board of Appraisers is a proper one, then the least that can be done to right the damages done to these companies is to return these amounts to them in full without deduction for the protection of American claims.

Out of a fund of approximately $200,000,000, it is quite possible and thoroughly practical to deduct amounts sufficient to protect American claims without retaining any portion of the meager amount awarded the German shipping companies.

Your committee has heard from other sources of the tremendous wealth and hidden assets of German industrial corporations which were particularly benefitted by the war and also benefitted by the period of inflation. For instance, German industrial corporations during the inflation period which began in 1919, issued mortgage bonds which they have since redeemed for but a fraction of their issued value, while the proceeds of these bonds were used to equip modern factories and purchase additional real estate. This has also been done in a measure by the German banks. This was not the case, however, in the German shipping companies because they had no security for bond issues. Their security having been seized by all the nations of the world, they were unable to take advantage of the inflation to add to their realty holdings and retire their bonds at a later date at a fraction of their issued values.

The safety of investments of the thousands of American citizens in the shares and dollar bonds of North German Lloyd is menaced by any deductions from the values of shipping property. These investments were made in good faith by substantial American citizens believing that their Government would properly compensate the shipping companies for their property which was used to such great advantage for the transportation of troops and supplies and which was a very material factor in bringing the war to a close.

Since the war the German shipping companies have done more to add to the prosperity of our country than any other group of German claimants.

Respectfully submitted.

(Signed) W. C. RIORDAN,
LANE, ROWELL & Co.,
109 East Redwood Street, Baltimore, Md.

Senator KING. Senator Sutherland, the Mixed Claims Commission have rendered awards to a number of German banks for thirty-odd millions of dollars. I am told that some depositors and some who had securities, have valid claims against the banks, and that a part of this award grows out of the use by the banks of those deposits and of stocks which they were authorized to purchase. Now, would you pay this money to the banks or would you permit the stockholders or depositors to come in and show that they have a direct interest in this money?

Mr. SUTHERLAND. Do you mean the depositors or customers of the bank?

Senator KING. Yes; the depositors or customers of the bank.

Mr. SUTHERLAND. Well, we are constantly breaking up these larger trusts of the large German banks into their component parts, and in that work the banks are extending every facility. They are just as anxious to get these matters adjudicated as we are.

Now, I have here a statement showing all the items that we have to the credit of these various banks and their branches. From time to time the depositors or customers of a bank file claims with us, and the banks aid them in making proof, and assist us in every way in clearing up these accounts.

I will say that there is no apprehension on my part, and I do not think there is any on the part of anybody else, that these banks are going to deal unfairly with their depositors and customers and clients any more than would one of our American banks. They stand very high, and their business depends upon thier integrity and their business conduct. I do not think there is any apprehension in anybody's mind on that.

The CHAIRMAN. Have you a complete list of them?

Mr. SUTHERLAND. Yes.

The CHAIRMAN. Put that in the record at this point.

Mr. SUTHERLAND. All right.

(The statement referred to is here made a part of the record. as follows:)

Summary

Deutsche Bank and branches	$14, 893, 530. 38
Berliner Handels Gesellschaft	5, 496, 356. 00
Direction Der Disconto Gesellschaft and branches	2, 406, 800. 48
Anglo Austrian Bank and branches	1, 773, 108. 66
Dresdner Bank and branches	1, 912, 658. 88
Bank fur Handel & Industrie, Darnstadter und National Bank	1, 086, 740. 11
Lazard Speyer-Ellissen	993, 044. 31
K. K. Priv. Oesterreichische Credit Anstalt Fur Handel Und Gewerbe	163, 723. 84
K. K. Boehmische Bank	9, 507. 98
Total	$28, 735, 470. 64

Senator KING. Have you any information as to the proportion of these thirty-odd millions of dollars which is awarded to the banks, which will finally as a residuum go to the banks, and what proportion will go to their customers?

Mr. SUTHERLAND. It would be impossible to tell that at this time. Just as fast as we get claims from any of their clients, of course we separate it from the bank's claim. We are breaking up the larger trusts all the time into smaller ones.

Senator KING. Do your books indicate, or is there any information in your possession, that indicates that the greater part of these funds that are covered by these awards, belong to the depositors and creditors and patrons of the bank in contradistinction to the bank itself?

Mr. SUTHERLAND. No. These amounts which are now held to the credit of these banks of course, so far as we now know are owned by the banks. They were seized in the name of the banks and under the operation of the trading with the enemy act.

The CHAIRMAN. They were held as deposits?

Mr. SUTHERLAND. Yes.

The CHAIRMAN. So then they did not own them?

Mr. SUTHERLAND. No, and they will eventually almost entirely be proven to be the property or money or securities of their customers. And just as fast as those customers come forward and make claim for them it is being separated. There is no difficulty about their getting it.

Senator KING. Under the Winslow Act I would suppose that there would have been hundreds if not thousands of claims presented to you for a part of these funds, under the $10,000 appropriation which was made.

Mr. SUTHERLAND. There have been a very large number, so that the amount of course is largely reduced. This statement gives the amount that is at present to the credit of these banks and their branches.

Senator KING. Has there been a considerable amount taken out of the banks under the Winslow Act?

Mr. SUTHERLAND. Oh, yes. They made some claims under the Winslow Act as was the case with other property.

The CHAIRMAN. I should think under the Winslow Act the most of them were paid. The most of these deposits were under $10,000 I think.

Mr. SUTHERLAND. No.

Senator KING. Still there is $35,000,000 to be paid to the banks.

The CHAIRMAN. Well, of course there are some large deposits.

Senator KING. How much is due to the banks?

Mr. SUTHERLAND. There is due to the Deutsche Bank and branches $14,893,530.38. There is a total due to the banks of $28,735,470.64.

Senator KING. Have you any reason to believe that the greater part of that belongs to individuals who were depositors or customers of the banks?

Mr. SUTHERLAND. The presumption would be that it was almost all the property of the customers of the banks.

The CHAIRMAN. They were acting as trustees for the individuals.

Mr. SUTHERLAND. Yes.

Senator KING. What I am trying to come at is, that this great sum will not go to the banks and add profits by reason of the depreciatio of the mark, and by the fact that the securities which they purchas d for their customers would be claimed by the banks and sold by the banks and the customers be deprived of their own interest.

Mr. SUTHERLAND. No.

The CHAIRMAN. I understand that the Winslow Act took over $37,000,000 to pay the depositors of the banks.

Mr. SUTHERLAND. I have not that statement here.

The CHAIRMAN. If that is all, the committee will now stand [illegible]ourned.

(Whereupon, at 4.33 p. m., the committee adjourned.)