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} REPORT
No. 273

SETTLEMENT OF WAR CLAIMS BILL OF 1928

FEBRUARY 9, 1928.—Ordered to be printed

Mr. SMOOT, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 7201]

The Committee on Finance, to whom was referred the bill (H. R. 7201) 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, having had the same under consideration, report favorably thereon, with an amendment, and as amended recommend that the bill do pass.

I. INTRODUCTORY STATEMENT

The bill which your committee has had under consideration is substantially the same as the bill (H. R. 15009) which passed the House of Representatives last Congress. In addition to the exhaustive hearings and extensive consideration in executive sessions last year, further hearings were held by your committee this year, and the bill again considered in detail in executive session. After reporting the bill last session, the committee gave further consideration to it and determined to submit on the floor of the Senate additional amendments, in lieu of some of the amendments first recommended by the committee. Many of the amendments recommended last year were adopted by the House of Representatives this year. The bill as now reported by your committee follows, in general, the policies of the House bill. The various amendments to the provisions of the House bill recommended by your committee will be explained hereinafter.

Your committee recommends striking out all after the enacting clause and rewriting the bill, in order not to burden the Senate with

a large number of purely clerical amendments. For example, there are numerous cross references to other sections of the bill. The elimination of one section and the addition of other sections has resulted in a change of section numbers and a corresponding change in cross-section references. Again, the committee has attempted to simplify the bill, particularly by the insertion of a brief explanation (inclosed in parentheses) following the section references, indicating the subject matter of the section referred to. The committee appreciates fully the fact that the bill is complicated by reason of the innumerable complex situations covered and the complexities of the existing trading with the enemy act. The committee was of the opinion that the large number of minor clerical amendments would add to the difficulty of a proper understanding of the provisions of the bill and the policies which they are intended to carry out.

II. OUTLINE OF PROBLEMS INVOLVED

There are three major problems involving the United States and its nationals and the German Government and its nationals arising out of the World War which remain unsettled:

(1) The United States Government and many American citizens suffered losses during the war period by reason of acts for which the German Government is responsible, and their claims must be satisfied. A commission, known as the Mixed Claims Commission, United States and Germany, has been created to hear and determine the claims and to enter awards for the losses for which Germany was responsible. Germany has undertaken to pay these awards. But if the American claimants are forced to rely upon the distributive share in the payments by Germany, approximately 61 years will be required for payment in full. Consequently, some method must be provided by which the American claimants can obtain a more immediate payment.

(2) Property of German nationals in the United States was seized during the war by the Alien Property Custodian under the provisions of the trading with the enemy act, and a large part of it is still retained. Under the Knox-Porter peace resolution, which was incorporated in the treaty of Berlin, the United States unquestionably possesses the right to retain this property until Germany has made suitable provision for the satisfaction of the claims of American nationals against the German Government. Unless, however, Congress is prepared to adopt a policy of confiscating the property of an enemy national to pay the debts of his government some provision must be made for a more immediate return of this property.

(3) The United States Government, under the authority of a joint resolution of Congress, seized and took title to a large number of ships owned by citizens of Germany, and acquired for its own use during the war a large number of patents and a radio station. The United States is justly indebted to the German nationals for the value of their property, for there was no thought at the time, and certainly no serious consideration has been given subsequently to the possibility, of the confiscation of private property not of a naval

or military character. Consequently, some provision must be made for the payment of the amounts justly due.

The proposed legislation recognizes the close relationship between the problems and that they must be solved together. In theory, the solution might be simple. However, we are confronted with a practical situation, and a practical solution, therefore, must be provided. Under the circumstances, it is impossible to provide for the immediate payment of all the American claimants, the immediate payment of all the owners of the ships and patents and the radio station, and the immediate return of all the alien property. Accordingly, your committee was confronted with the task of providing for the immediate payment of as large a percentage as possible of the claims of the American nationals and German nationals, and for the return of as large a percentage as possible of the alien property.

Similar problems involving the United States and its nationals and the Austrian and Hungarian Governments and their nationals remain unsettled. Heretofore it has been impossible to dispose of the questions involved, primarily for the reason that the commission which had been established for the adjudication of claims of American nationals against those countries had not progressed sufficiently with its work. However, adequate progress has now been made and your committee has recommended the necessary amendments throughout the bill. These amendments will be explained in detail hereinafter.

III. MAIN FEATURES OF THE BILL

The bill, as amended by your committee, has three main features:

First, it provides for the immediate payment in full of the claims of American nationals against Germany not in excess of \$100,000, or in respect of death or personal injury, and for the payment in full, but in installments, of the remainder of such claims; for the payment in the immediate future of 50 per cent of the claims of German nationals for the ships, patents, and radio station, and for the payment of the remainder of such claims in installments, but the total amount is not to exceed \$100,000,000, less administrative expenses; for the immediate return of 80 per cent of German property held by the Alien Property Custodian, and for the eventual return of the remainder.

Second, it provides for the creation of a "special deposit account" from which will be made the payments above described, except that the payment of 80 per cent of German property held by the Alien Property Custodian will be made from the funds now in the hands of the Alien Property Custodian. The fund is composed of the following amounts: (1) Twenty per cent of the German property temporarily retained by the Alien Property Custodian (estimated at \$40,000,000); (2) the German share of the unallocated interest fund hereinafter described (approximately \$25,000,000); (3) payments heretofore or hereafter received from Germany under the Paris agreement in satisfaction of the awards of the Mixed Claims Commission (\$23,000,000 to September 1, 1928, and \$10,700,000 a year thereafter); (4) an appropriation authorized to be made in an amount equal to the awards for the ships, patents, and radio stations, \$50,000,000 of which is to be immediately available. This makes a

total of \$138,000,000 available shortly after the enactment of the act. It should be noted that none of the payments from Germany on account of the costs of the army of occupation are included in the fund, that such payments will continue to be covered into the Treasury of the United States to be available for the general expenses of the Government, and that no burden is placed upon the Treasury except for the payment of an existing debt.

Third, it provides for the return in full of all property of Austrian or Hungarian nationals held by the Alien Property Custodian upon the payment by their governments of an amount sufficient to pay all the awards of the Tripartite Claims Commission on account of claims of American nationals against Austria or Hungary or their nationals.

IV. DISCUSSION OF MORE IMPORTANT QUESTIONS OF POLICY

PAYMENT OF AMERICAN CLAIMS AGAINST GERMANY

Under the terms of the bill an amount equal to 80 per cent of the aggregate of the awards entered by the Mixed Claims Commission, entered on account of claims of nationals of the United States, is to be used immediately for the payment of all death and personal injury claims awards and all awards of \$100,000 or less. The balance is to be prorated among the larger awards. The above percentage was reached by an agreement between the representatives of the American claimants affected and of the German alien property owners. The representatives of the American claimants appeared before your committee and testified that the percentage was very satisfactory and that they preferred that the provisions of the bill be in accordance with the agreement. Consequently, your committee is recommending no change.

AWARDS TO INSURANCE COMPANIES

It was contended before your committee that the payment of awards on behalf of insurance companies should be postponed, so that they would share with the payments to the United States. Your committee believes that there was no sound basis for a discrimination against any class and in favor of any other class of American claimants. It should be borne in mind that the matter does not involve payments of money of the United States, but merely is a matter of the distribution of moneys received from Germany. No one has contended that the insurance awards should not be paid. The only question presented relates to the order in which they should share. The testimony before the Committee on Ways and Means reveals that the insurance companies did not make the undue profits on their marine-insurance business which have been alleged. But quite without regard to the matter of profits, your committee is unable to see any proper basis for a distinction between their claims and the other claims. Furthermore, the funds received from Germany for the payment of the American claimants are, under the act of February 27, 1896 (29 Stat. L. 28, 32), a trust fund for the payment of the American claimants, to which the insurance companies are

entitled to share as any other claimants. It should be noted that the practical effect of the present provisions of the bill is to postpone payment of the large awards until after all death and personal injury and small awards have been paid.

AWARDS TO THE UNITED STATES

The payment of the awards to the United States on its own behalf is postponed under the bill until after all private claimants have been paid in full. Your committee believes that this is a proper provision and is amply justified. The awards to the United States, with but a minor exception, are of the two classes: (1) Awards on account of losses paid under policies of war-risk insurance, amounting to approximately \$24,000,000, exclusive of interest; and (2) awards on account of ships owned by the United States destroyed or damaged, amounting to \$17,700,000, exclusive of interest.

The 1921 annual report of the Secretary of the Treasury shows (p. 451) that a profit was made by the United States on war-risk insurance of approximately \$17,600,000. Making allowances for the ships lost, therefore, the awards including the interest thereon actually represent a profit to the United States. In addition the United States accepted priority over all claimants in the payment of its costs of the army of occupation. But there is, in the opinion of your committee, a more general policy justifying this provision. The costs of the war should be spread among all the nationals of the governments. Private individuals should not be forced to bear any undue portion. If all the awards are paid eventually by Germany, the United States will lose nothing. If insufficient payments should be received, the losses sustained should be spread, indirectly through taxation, among all our taxpayers.

RETURN OF GERMAN PROPERTY

The bill provides for the immediate return of 80 per cent of the property now held by the Alien Property Custodian. This percentage was reached in the agreement above referred to and the parties affected are satisfied with it. All earnings and profits upon the funds in the hands of the Alien Property Custodian accruing since the passage of the Winslow Act (March 4, 1923) are to be returned in full. The so-called "unallocated interest fund" (that is, the earnings and profits upon money deposited in the Treasury prior to March 4, 1923) will be returned under the bill but not until all other claimants have been paid. It was contended that the unallocated interest fund should bear interest during the period of approximately 25 years before its return to its true owners. Your committee rejected this proposal. The original agreement between the parties provided for 3½ per cent interest. In order not to open up the awards of the Mixed Claims Commission, which bear interest at 5 per cent, and to prevent unjust enrichment to the United States if all future payments are received, the bill fixes 5 per cent interest upon all unpaid amounts. Accordingly, the interest provision of the bill seemed eminently fair. Furthermore, no one can predict whether the payments from Germany will be sufficient for the

return of the unallocated interest fund. Nor can there be any assurance that the interest thereon would be paid. Your committee did not feel justified in holding out false hopes. At the same time, if all private claims are paid and payments are still being received from Germany sufficient to return the entire fund together with interest thereon, it seems very unlikely that a provision to this effect would meet with opposition in Congress.

SHIP CLAIMS

The principal issue presented in the payment of the ship claims is the valuation to be given—that is, whether the provisions of the House bill should be adopted, providing for a new determination of the values of the ships, or whether the valuations made by the Naval Board of Survey in 1917 and 1918 should be adopted and payments made in accordance therewith. The committee last year first reached the conclusion that the latter provision was the proper one. After further consideration, however, in the amendments agreed to be submitted on the floor, it was proposed to restore the provisions of the House bill. Your committee has again gone into the question very carefully and a member of the Naval Board of Survey again appeared before your committee. As the result of its deliberations the committee has adopted the provisions of the House bill, under which an arbiter will determine the awards to be entered, with a maximum limitation of \$100,000,000, inclusive of the amounts to be paid on account of patents and the radio station and the interest through December 31, 1928. The testimony shows that the Naval Board, undoubtedly following the only course open to it at the time, adopted a 1914 average value for a tramp steamer new, applied to that a curve of depreciation, and by personal inspection of most of the ships increased or decreased the resulting value as the condition of the ship warranted. The joint resolution specified a valuation as of the time of taking and, as a matter of fact, the ships were not taken by the United States until after the declaration of war with Germany on April 6, 1917. Although some of the ships were within the tramp steamer class, it is admitted that many of them were of the more expensive passenger and fast-freight type. Your committee is convinced that the owner should have an opportunity for a "day in court," and an opportunity to prove the values of the ships, and that the United States should also have a similar opportunity.

RULE OF VALUE FOR SHIPS

In the first place the bill applies only to "merchant" ships. It is reported that at least four of the ships were naval ships, and these would be excluded. Furthermore, if any of the ships were used as naval ships, even though otherwise within the merchant class, no compensation would be paid for them. The rule of value prescribed also requires that the arbiter make proper allowances for the condition of the ship at the time the United States took possession of it. Accordingly, all the damages as a result of acts of sabotage by the crews will be taken into consideration and the necessary deductions from the value of the ship made.

LATE CLAIMS OF AMERICAN CITIZENS

The agreement for the creation of the Mixed Claims Commission was accompanied by an exchange of notes under which both the United States and Germany agreed to restrict the jurisdiction of the commission to claims filed within six months after the date of its first meeting. This period expired on April 9, 1923. It appears that a very large number of claims were not presented to the commission because the claimant was not informed of his rights in time to present his claim. Your committee is of opinion that the six months' period was entirely too short and that it should be extended. Of course, there will be a large number of claims over which the commission will not have jurisdiction, and these, if filed, undoubtedly will be promptly dismissed. An American claimant having a legitimate claim, however, for which Germany has assumed liability should have a reasonable opportunity to present his claim and obtain an award. Accordingly, your committee has recommended an amendment under which the President is requested to enter into negotiations with the German Government with a view to extending the period of time for the presentation of claims to the Mixed Claims Commission.

MARK DEBTS

Although the question of the jurisdiction of the Mixed Claims Commission over debts will be discussed in detail hereinafter, it seems appropriate to point out at this time that your committee has considered with great care the problem of the payment of debts which matured after the war, and which were payable in German currency. The Supreme Court of the United States has twice within the last two years considered the question, and has decided that any such debt may be paid in such currency even though it has depreciated to such an extent as to be of no practical value (*Deutsche Bank v. Humphrey*, 272 U. S. 517; *Zimmermann and Forshay v. Sutherland*, 47 Sup. Ct. 625). There are decisions to the same effect of the Tripartite Claims Commission and of the English courts. The purchasers of marks and of bonds payable in marks assumed the risk of currency fluctuation. There appears to be no proper basis upon which Congress should guarantee investors and speculators from loss. It would seem that the only recourse the creditor has is under German law, the German revaluation act, in the case of certain private debts, and the German redemption act, in the case of bonds of the German Government or of any component State.

RETURN TO NEUTRAL CORPORATIONS

It was urged before the committee, particularly on behalf of two corporations organized under the law of Switzerland, that all the property of a neutral corporation should be returned at once. After careful consideration, your committee rejected the proposal. It is true that the Supreme Court has held (*Behn, Meyer & Co. v. Miller*, 266 U. S. 457) that ownership of the shares of a corporation by enemies did not make the corporation an enemy corporation, within the meaning of the trading with the enemy act. However, the corporation, even though organized in a neutral country, may be an "enemy" if it was doing business in Germany (*Swiss National*

Insurance Co. v. Miller, 267 U. S. 42). The corporations on behalf of whom the request was made to your committee, which were held to be enemies because of the fact that they were doing business in Germany, admit that, in addition, a very large percentage of their stock was owned by enemies. Under the circumstances, your committee decided that their property should be returned to them in the same manner as other former enemies.

V. CLAIMS OF AMERICAN NATIONALS AGAINST GERMANY

(1) CLASSES OF CLAIMS

Germany in the treaty of Versailles of June 28, 1919 (the provisions of which in this respect were incorporated in the treaty of Berlin of August 25, 1921; 42 Stat. L. 1939) recognized its liability for two different classes of claims:

(a) So-called reparation claims—that is, claims which come under Part VIII of the treaty of Versailles. Generally speaking, these claims are for losses and damages suffered by the United States and its nationals as a consequence of injury to or destruction of life or property (the classes of claims which are included are enumerated in Annex I to Section I of Part VIII); and

(b) Claims arising under the economic clauses of the treaty (Part X). One class of these claims is for debts owing to American citizens, provided for under article 296 of Section III of Part X. The other class is included under article 297 of Section IV of Part X and covers claims resulting from the application of an exceptional war measure or measure of transfer by Germany to the property, rights, and interests of American citizens.

It will be noted that the claims of the United States Government (other than its claim for the costs of the Army of Occupation, under Part IX) are based solely upon the reparation clauses, while the claims of American citizens may have arisen either under the reparation or the economic clauses.

The Versailles treaty provided that the reparation claims should be presented to the Reparation Commission. Under these provisions the Allies presented lump-sum claims for reparations, and the Reparation Commission tentatively fixed the amount which Germany was to pay at approximately 132,000,000,000 gold marks—that is, approximately \$33,000,000,000. Inasmuch as the United States did not ratify the Versailles treaty, its claims for reparations were not presented to the Reparation Commission.

The method provided for the adjudication and determination of the amounts due under the economic clauses of the treaty was this: For the settlement of debts (under art. 296) it was provided that clearing offices could be established; each country could have its own clearing office and the debts would be reported by the nationals of each country to its own clearing office, and at stated periods a balance would be struck. If the balance was against Germany, the amount would be paid by Germany, and if in favor of Germany the amount would be credited against her reparation payments. For the claims that arose for damages resulting from an application of exceptional war measures or measures of transfer (under art. 297) and for disputed debt claims, the treaty provided for the establishment of mixed arbitral tribunals. All judgments of the mixed arbitral tribunals were payable through the clearing offices.

(2) THE MIXED CLAIMS COMMISSION

Inasmuch as the United States was not a party to the Versailles treaty or to the agencies established thereunder, it became necessary for the United States and Germany, after the ratification of the treaty of Berlin, to establish a tribunal for the settlement of all classes of American claims. Consequently, an agreement was entered into between the United States and Germany on August 10, 1922 (42 Stat. L. 2200), for the establishment of a Mixed Claims Commission, consisting of one commissioner to be appointed by each Government and an umpire to be selected by agreement between the two Governments. It is worth noting that the umpire agreed to is an American citizen—Judge Edwin B. Parker, of Texas. The commission was organized on October 9, 1922, and since that time has been engaged in the tremendous task of adjudicating the claims and entering awards upon them. Your committee is convinced that the commission has patiently and industriously discharged its task, in a manner to deserve and command the respect and confidence of all parties, and that international arbitration has been effectively promoted by the efficient functioning of the commission.

The commission was given jurisdiction to pass upon the following categories of claims:

(a) Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights, and interests within German territory as it existed on August 1, 1914;

(b) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to persons, or to property, rights, and interests, since July 31, 1914, as a consequence of the war; and

(c) Debts owing to American citizens by the German Government or by German nationals.

Accordingly, the jurisdiction of the commission extended to all classes of claims—that is, claims of the United States Government and claims of American citizens, whether such claims were based upon the reparation clauses or upon the economic clauses. The liability of Germany, however, is fixed in the treaty of Berlin and, of course, could not be extended or diminished. The fact that Germany's liability differs in the two classes of claims under the economic clauses accounts for the apparent misunderstanding on the part of some of the claimants.

One of the points about which there has been some misunderstanding is the rate of exchange applicable in the settlement of debt claims. The treaty of Versailles specified that the rate of exchange should be the average cable transfer rate prevailing during the month immediately preceding the outbreak of war between the country concerned and Germany. Applied to the case of the United States, the average cable transfer rate was 17.4 cents to the mark. Under the clearing-office system the Allies who adopted the system and Germany were to be responsible for the debts of their own nationals. But the United States did not adopt the clearing-office system. Consequently it was questionable whether, under the treaty of Berlin, Germany was responsible for the debts of its nationals. This question was settled by agreements between the German agent and the American agent, approved by their Governments, under

which Germany accepted the broader viewpoint and assumed primary liability for the private debts and a rate of exchange of 16 cents for mark debts was adopted (see Hearings by Finance Committee on H. R. 15009, 1927, pp. 305-312).

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 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 claimant.

The decisions of the Mixed Claims Commission are final and binding upon the two Governments, and the awards of the Commission constitute a direct financial obligation of the Government of Germany.

A table showing the number of the awards and their classification will be found in Part X of this report. The following table shows the aggregate amounts of the awards entered as of January 23, 1928, and includes an estimate of the probable awards to be entered in the future:

1. Awards on behalf of American nationals:	
Principal of awards entered.....	\$110, 841, 701. 97
Principal (estimated only) of awards to be entered....	22, 000, 000. 00
Total principal.....	<u>132, 841, 701. 97</u>
Interest to Jan. 1, 1928, on awards entered.....	49, 086, 460. 56
Interest to Jan. 1, 1928 (estimated only), on awards to be entered.....	9, 800, 000. 00
Total interest.....	<u>58, 886, 460. 56</u>
Total of principal and interest.....	<u>191, 728, 162. 53</u>
2. Awards on behalf of the United States Government:	
Principal of awards entered.....	42, 034, 794. 41
Interest to Jan. 1, 1928, on awards entered.....	19, 203, 567. 03
Total of principal and interest.....	<u>61, 238, 361. 44</u>
3. Aggregate of awards under 1 and 2 above.....	252, 966, 523. 97

The Mixed Claims Commission agreement contained, of course, no method for the payment of the awards, and, as has heretofore been pointed out, the method of payment constitutes one of the problems with which the Congress is now confronted.

(3) THE DAWES PLAN AND THE PARIS AGREEMENT

It soon became apparent that the reparation payments demanded of Germany far exceeded Germany's immediate capacity to pay. In effect, Germany went into the hands of a receiver, and the Allies were confronted with the task of collecting from a debtor unable to pay

the total demands. The Dawes committee of experts was constituted to determine how Germany could pay and the annual payments which could be made. After investigation, it was decided in 1924 that the total of Germany's capacity to pay, after five preliminary years, was approximately \$600,000,000 a year. The Dawes plan did not pretend to fix the claims of the allied and associated powers, or to prescribe the methods by which the payments by Germany should be distributed. The committee did, however, make it clear that its determination of Germany's capacity to pay the above sum meant that this sum was the utmost she could pay, and continue to pay, in satisfaction of all claims of the allied and associated powers, however great. Although the United States was not a party to the agreement putting the Dawes plan into effect, it is apparent that the United States was confronted with but two choices: It could support the Dawes plan and assist in making it successful, or it could insist upon additional payments from Germany and thus assume the responsibility for the possible breaking down of the plan. The United States chose the first alternative. Accordingly, the United States was represented at the Paris conference which had been called for the purpose of determining upon a division of the payments to be made by Germany under the Dawes plan.

The United States claims were of two classes: First, its claim to have its army of occupation costs paid, and, second, its claims to have the awards of the Mixed Claims Commission paid. Under the Paris agreement of January 14, 1925, the United States is receiving as reimbursement for its Army costs, as a prior charge, the sum of 55,000,000 gold marks per annum, or approximately \$13,100,000. In view of this provision, the question of the payment of the Army costs of the United States is not involved in the proposed legislation.

It was also provided in the Paris agreement that the United States was to receive, as payment upon the awards of the Mixed Claims Commission, 2¼ per cent of all receipts from Germany on account of the Dawes annuities available for distribution through the Reparation Commission, with a maximum of 45,000,000 gold marks after August 31, 1928, or approximately \$10,700,000 a year. This amount constitutes the entire amount which the United States is entitled to receive on this account from the Dawes annuities paid by Germany. If no other method is provided for the payment of the awards of the Mixed Claims Commission, it will be seen that approximately 61 years will be required before all the awards, including those to the United States, are paid. The following table shows the estimated payments to the United States under the Paris agreement, based on maximum annuities:

[Estimates converted at \$0.2382 to the mark]

Year ending	United States share		Army cost (55,000,000 gold marks annually)		Mixed claims (2¼ per cent, but not to exceed 45,000,000 gold marks annually)	
	Gold marks	Dollars	Gold marks	Dollars	Gold marks	Dollars
To Aug. 31, 1927 (actual).....	103,636,000	26,958,000	55,000,000	13,058,000	58,636,000	13,920,000
To Aug. 31, 1928 (estimated).....	84,400,000	20,104,000	55,000,000	13,101,000	35,000,000	8,330,000
To Aug. 31, 1929 (estimated).....	100,000,000	23,820,000	55,000,000	13,101,000	45,000,000	10,719,000
Total.....	288,036,000	70,882,000	165,000,000	39,260,000	138,636,000	32,969,000
Aug. 31, 1930, and thereafter.....	100,000,000	23,820,000	55,000,000	13,101,000	45,000,000	10,719,000

VI. RETURN OF GERMAN PROPERTY HELD BY ALIEN PROPERTY CUSTODIAN

Under the provisions of the trading with the enemy act approved October 6, 1917, the Alien Property Custodian was authorized to seize property in the United States belonging to enemies or allies of enemies as defined by that act, to be held until after the war, and any claim arising therefrom to be settled "as Congress shall direct." During the war period the Alien Property Custodian seized more than \$500,000,000 worth of property, including the property of American citizens or citizens of allied or neutral countries which was erroneously seized.

After the armistice numerous amendments to the trading with the enemy act were adopted by Congress authorizing the return of property to certain classes of "enemies" or "allies of enemies." The most important of these amendments was the Winslow Act, which became a law on March 4, 1923, and which authorized the return to all enemies or allies of enemies of not more than \$10,000 of the principal of their money and other property seized and of not more than \$10,000 during any year of the income on their money and other property.

As a result of these various amendments and the return of property erroneously seized, the property in the hands of the Alien Property Custodian to-day has been reduced to a value of approximately \$265,000,000. The legal status of, and the rights which the original owners have in, this property can only be determined by consideration of a number of factors.

The text of the trading with the enemy act as originally enacted, the reports of the committees accompanying the bill, the discussion on the floor of both Houses of Congress, and numerous court decisions under the original act, clearly indicate that the act contemplated sequestration rather than confiscation. The amendment of March 28, 1918, however, broadened the powers of the Alien Property Custodian so as to include the right to manage or sell the property "as though he were the absolute owner," and in the so-called Chemical Foundation case decided by the Supreme Court on October 11, 1926, the Supreme Court held that when any of the property was sold the former enemy owners were deprived of all rights in the property and in the proceeds derived from the sale. Though it was unnecessary for the purposes of this particular decision, the language of the court is broad enough to be open to the construction that the seizure of property under the authority of the trading with the enemy act, as amended, together with the applicable treaty provisions, deprived the owner of all rights, whether or not the property was sold, and that the property was virtually confiscated.

It is to be noted, however, that even if the property should be held to have been confiscated (under the dictum of this decision), in spite of the clear intent of Congress to the contrary, Congress nevertheless has retained at all times absolute authority over this property and could at any time not only return it to the original owner but declare it to be held for the benefit of and for ultimate return to the original owner. This is apparently just what Congress did under the terms of the Winslow Act in providing that \$10,000 of the principal shall be returned to each individual owner, and that thereafter the earnings or interest on the property remaining in the hands of

the Alien Property Custodian shall be paid to the owner annually up to the sum of \$10,000. So that notwithstanding the undoubted power of Congress to confiscate, reaffirmed in the Chemical Foundation case, Congress not only has refused to exercise that power up to the present time but has clearly by legislation asserted its policy to be the very contrary of confiscation.

It is fair to say that the primary reason for not returning all the alien property at the time of the adoption of the Winslow Act was that Congress was under a duty to retain sufficient property as security until the German Government should make adequate provision for the settlement of the claims of American nationals against Germany and its nationals.

The treaty provisions governing the disposition of the alien property are to be found in Section IV of Part X of the treaty of Versailles (article 297 et seq.), the rights under which are specifically reserved to the United States under the preamble and Article II of the treaty of Berlin. Under these provisions, the allied and associated powers reserved the right to liquidate the property of German nationals that had come into their hands, and to apply the proceeds to the settlement of claims of their own nationals against Germany based upon the economic clauses (Part X) of the treaty, and to retain any property or the proceeds thereof not so used, and provided that any property or the proceeds thereof not used for the settlement of the claims of their own nationals should be credited to Germany on her reparation obligations. Germany at the same time undertook "to compensate her nationals in respect to the sale or retention of their property, rights or interests in Allied or Associated States."

The preamble to the treaty of Berlin includes in full the provisions of sections 1, 2, and 5 of the joint resolution of Congress approved July 2, 1921, section 5 of which provides that all the property of German nationals held by the United States Government "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 successors, shall have * * * made suitable provision for the satisfaction of all claims against said Government." Article II of this treaty provides that the rights and advantages stipulated in Part X of the treaty of Versailles shall be enjoyed by the United States, but that "in availing itself of the rights and advantages stipulated" in the treaty of Versailles the United States "will do so in a manner consistent with the rights accorded to Germany under such provisions."

It is apparent that the language of the preamble to the treaty of Berlin under which the United States reserves the right to retain the property until suitable provision has been made for the settlement of American claims is inconsistent with its rights under Article II of the treaty which, by reference to Part X of the treaty of Versailles, specifically gives the United States the right to liquidate the property and to apply the proceeds to payment of claims of American nationals against the German Government. The only interpretation which will reconcile these provisions is that the United States specifically reserved the right to use the German property for the settlement of American claims only if suitable provision were not made by the German Government for the settlement of American claims. And Congress has reserved to itself the decision of this question.

It is very important to note, however, that the United States Government, under the treaty, can not retain any property belonging to German nationals without giving credit to the German Government for that property on Germany's reparation payments and can not liquidate German property and apply it to the payment of the claims of American nationals without giving credit to the German Government on its reparation payments for the excess of the proceeds not so used.

The following statement of the Alien Property Custodian shows the value of trust property on hand as of October 31, 1927:

Cash deposited with the Secretary of the Treasury:	
Invested.....	\$184, 655, 065. 51
Uninvested.....	300, 864. 23
Total cash.....	184, 955, 929. 74
Cash with depositaries.....	25, 495. 87
Stocks.....	42, 951, 506. 96
Bonds, other than investments made by the Secretary of the Treasury.....	30, 284, 948. 23
Mortgages.....	1, 924, 193. 46
Notes receivable.....	245, 483. 45
Real estate.....	3, 179, 717. 62
Accounts receivable.....	577, 931. 71
Miscellaneous, etc.....	464, 655. 73
Total.....	264, 609, 862. 77

The Alien Property Custodian estimates the division of the above property among nationals as follows:

German.....	\$245, 213, 702. 70
Austrian and Hungarian.....	12, 337, 563. 38
Interned.....	13, 230. 49
Others.....	7, 045, 366. 20
Total.....	264, 609, 862. 77

VII. CLAIMS OF GERMAN NATIONALS AGAINST THE UNITED STATES

Claims of German nationals against the United States Government for compensation on account of acts of the United States during the war period divide themselves into three main groups: (1) Ships seized by the United States, (2) a radio station sold to the United States, and (3) patents sold to or used by the United States.

(1) *Ships*.—The ships were seized and title to them acquired by the United States under the authority of the joint resolution of Congress adopted May 12, 1917, which authorized the President to take possession and title to any vessel within our jurisdiction belonging to a citizen or the subject of any nation with which we were at war, provided for the appointment of a board of survey to ascertain their value, and provided that the findings of the board were to be considered as competent evidence in any claim for compensation.

Some of the ships have been sold, some chartered, some were destroyed during the war, some have been scrapped, and the balance are still being operated by agencies of the United States Government.

Whatever legal rights for compensation the original owners may have, it must be pointed out that the language of the preamble to the treaty of Berlin, as in the case of the alien property, says that any property belonging to German nationals held by the United States Government shall be retained until the German Government has

made suitable provisions for the settlement of American claims. Moreover, as pointed out above, it is clear that if the United States Government retains the ships without compensation it must, under the treaty, credit the German Government with the value of the ships on the reparation payments due by the German Government to the United States. The effect, therefore, of retaining these ships without compensation would be to reduce the amount payable by Germany under the Paris Agreement for the benefit of individual American citizens having claims against the German Government, and to that extent would mean that the United States was profiting at the expense of its own citizens unless Congress appropriated a corresponding amount for use in paying the claims of American nationals.

The joint resolution of May 12, 1917 (40 Stat. 75), authorizing the seizure and acquisition of title of the ships by the President, is as follows:

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.

Under the authority of this resolution the President issued several Executive orders, the principal one of which was the order of June 30, 1917, under which the ships were taken over and were distributed to the United States Shipping Board and the Navy. (See Executive orders of May 11, 1917; May 14, 1917; May 16, 1917; May 22, 1917; June 12, 1917; July 3, 1917; July 12, 1917; August 3, 1917; September 22, 1917; November 2, 1917.)

(2) *Radio stations.*—The possession of two radio stations (Sayville and Tuckerton) was taken over by the United States after the outbreak of the World War, apparently under the authority granted the President by the radio communication act of August 13, 1912 (37 Stat. L. 302). The possession of the Tuckerton station was taken by the Navy on September 9, 1914. It developed that this station was owned by nonenemies, but that certain enemies had liens upon it under construction contracts and otherwise. The Alien Property Custodian seized and later sold all these enemy interests to a private corporation. The proposed bill therefore does not provide for compensation by the United States on account of this station.

The Sayville station was owned by a New York corporation, the stock of which was beneficially owned by enemies. The station was leased to the United States Government in 1915 and was being operated by the Navy Department in 1917. The Alien Property Custodian seized all the stock of the New York corporation and installed

directors and managed the corporation. The corporation as reorganized by the Alien Property Custodian sold the station to the United States Government and the corporation was thereafter dissolved. The consideration paid by the United States (approximately \$45,000 for the plant) was paid to the Alien Property Custodian. The bill proposes to determine the compensation which should have been paid by the United States for this station.

(3) *Patents*.—Patents fall into two classes: (1) Those used by the United States prior to the acquisition by the United States of any license to use, and (2) patents sold or licensed by the Alien Property Custodian to the United States. It is proposed to determine the compensation which should be paid for both classes of patents.

VIII. SETTLEMENT OF AUSTRIAN AND HUNGARIAN CLAIMS

As stated above, it was impossible last year to provide for the return of the property of nationals of Austria and Hungary held by the Alien Property Custodian because of the fact that it was impossible to estimate the probable amount of the awards to American citizens on their claims against Austria or Hungary and their nationals. A commission was established (known as the Tripartite Claims Commission) by the agreement of November 26, 1924 (44 Stat. L. 2213), between the United States and Austria and Hungary under which claims of the United States and its nationals (under the 1921 treaties of Vienna and Budapest, 42 Stat. L. 1946, 1951) were to be presented to a commissioner for adjudication. It was provided in the agreement that all claims must be presented within one year from the date on which the commissioner held the first session, and this period expired on January 25, 1927. More than one-half of the number of claims filed with the commission have now been disposed of, and it is estimated that the aggregate of the awards against Austria will not exceed \$3,000,000 and that the aggregate of the awards against Hungary will not exceed \$1,000,000. The Alien Property Custodian has slightly more than \$12,000,000 of property belonging to Austrian nationals and less than \$1,000,000 belonging to Hungarian nationals. It is proposed that Austria and Hungary be permitted to deposit sums sufficient to pay the claims against them of American nationals and that upon such deposit the property held by the Alien Property Custodian be returned to their nationals. Accordingly the bill, through various amendments, provides for the return of all property of Austrian nationals and of Hungarian nationals, respectively, when the commissioner of the Tripartite Claims Commission certifies, in each case, to the Secretary of the Treasury that an amount has been deposited sufficient to pay all claims. The various amendments will be explained hereinafter as the provisions of the bill are discussed.

IX. DETAILED EXPLANATION OF THE BILL

The report will deal with the sections as they appear in the Finance Committee amendment. The only section of the House bill which is stricken out is section 2, which was a declaration of policy regarding the payment of the various classes of claims covered by the bill. Your committee believes that the present situation is unprecedented, and that it is quite impossible to predict what future situations may

be. It is the opinion of the committee that the terms of the present bill are a sufficient indication of the policies of Congress to be applied to the present situation. Other situations must be dealt with as occasion demands. Of course, the committee is in unanimous accord with the proposition that private property of enemy nationals may not be confiscated, and will not be confiscated, by the United States for the payment of the debts of the enemy government. The United States has always recognized, and doubtless always will recognize, the sanctity of private property. Despite our recently reaffirmed power to confiscate private property of an enemy national, we have always steadfastly insisted upon according private property full protection in the event of war. We have no reason to assume that this policy will be departed from in the future. Nevertheless, your committee did not believe that any good would be accomplished by the declaration of policy contained in the House bill. Accordingly, it is omitted from the bill as rewritten and reported by your committee.

SHORT TITLE

Section 1 of the bill, for the purposes of convenient citation in the future and also for convenient reference in the amendments made by the bill to the trading with the enemy act, provides that the bill, when it becomes law, may be cited as the "Settlement of the War Claims Act of 1928."

CLAIMS OF AMERICAN NATIONALS AGAINST GERMANY

Section 2 of the bill provides for the certification by the Secretary of State to the Secretary of the Treasury of the awards entered by the Mixed Claims Commission. These awards constitute claims of the United States against Germany, and are made to the United States on behalf of the individual claimant, just as in the case of all other claims of American citizens against a foreign government. The Secretary of the Treasury is then authorized to make payments to the persons on behalf of whom the awards were entered, in the amounts and in the order of priority specified in section 4.

Where a claim against Germany was assigned prior to the entry of the award by the Mixed Claims Commission, the commission would enter the award, if due notice was given, in the name of the assignee. Under the provisions of the section this is the only assignment which is recognized, except that in the case of an assignment of the award, including an assignment of any part of the award, by a receiver or trustee duly appointed by a court in the United States, the payment of the amount so assigned will be made to the assignee.

The section provides, in subsection (h), that as the payments are made to the American claimant the award and claim in respect of which the award was entered shall be assigned pro tanto to the United States. The liability of Germany for payment of the awards is extinguished only to the extent that actual payments, applied first to accrued interest and then to principal, are actually received.

Subsection (j) of section 2, requests the President to enter into negotiations with Germany, with a view to extending the time for the filing of claims before the Mixed Claims Commission, if such claims have been presented before July 1, 1928. If the agreement is entered

into, there will, of course, be no necessity for the filing of claims already presented, so far as the time limitation is concerned. In order not to unduly delay pro rata payments upon the awards in excess of \$100,000, it is provided that awards on account of late claims will be payable under the bill only if the agreement is entered into before January 1, 1929. Payments of the death and personal-injury awards and of the awards of \$100,000 or less and of \$100,000 upon the other awards will not be delayed.

CLAIMS OF GERMAN NATIONALS AGAINST UNITED STATES

Section 3 of the bill provides for the appointment of an arbiter to hear the claims of German nationals and to make awards of the fair compensation to be paid by the United States for the vessels, patents, and radio station herein described. It is expected that the proceedings will be informal, that many cases will be settled upon stipulation or compromise, and that formal hearing will be afforded only when necessary. The arbiter is given power to appoint referees in order that his decisions may be expedited in every possible manner. Payment to assignees is prohibited, except in case of assignment by a receiver or trustee, as in the case of awards of the Mixed Claims Commission.

The rules of compensation are prescribed so as to give to the claimant the fair value of the property to him. In the case of the ships, for example, the board of survey appointed by the Secretary of the Navy under the joint resolution fixed an aggregate value of approximately \$34,000,000 for all the vessels. In a suit against the United States the owners of the vessels claimed their value to be over \$230,000,000. It is probable that the value to the owners was considerably less than the latter sum and possibly more than the former. The rule prescribed in the bill is intended to approximate the price which a willing purchaser would pay for the vessel immediately prior to the time possession was taken by the United States, realizing that the ship could not be delivered until after the termination of the war and that the war would not terminate before July 2, 1921. In each case it is provided that any compensation already paid by the United States should be deducted from the compensation determined by the arbiter, in order to safeguard the United States against any payments prior to the payments of the award.

In the case of patents described in paragraph (3) of subsection (b) of section 3, which were licensed, sold, or assigned by the Alien Property Custodian to the United States, an aggregate amount of approximately \$105,000 was paid by the United States to the Alien Property Custodian and is still held by him, unallocated to any particular patent. In order to relieve the Alien Property Custodian of allocating this amount, it is provided (under section 28 of the trading with the enemy act which is added by the bill) that the custodian shall return this amount to the United States and that the arbiter will determine and award the full compensation. Many of the patents were used prior to the seizure by the Alien Property Custodian. This class of patents is covered by paragraph (4) of subsection (b). If the patent was ultimately seized by the Alien Property Custodian compensation will be paid, for example, for all use, before or after seizure, excluding use between the declaration of war and the armistice, until the patent was disposed of by the Alien Property Custodian.

dian. If it was licensed, assigned, or sold to a private party no further compensation by the United States will be paid. If it was licensed, assigned, or sold to the United States, the compensation will be determined under paragraph (3).

A Senate amendment to subsection (d) of section 3 places the burden of proof upon the German national to establish the interest of the German Government or any member of the former ruling family, if any, and prevents the entering of an award until such interest is determined. If any such interest appears, the arbiter will enter an appropriate award covering such interest. This award will not be paid, but will be applied in satisfaction of the final payments from Germany on account of the awards of the Mixed Claims Commission. The term "any member of the former ruling family," as used in this subsection and in other provisions of the bill, is defined in section 20 (c), added by your committee.

A maximum limit of \$100,000,000 is placed upon the awards which the arbiter may enter on account of the ships and patents and radio station, after deduction for the administrative expenses in carrying out this section. If the arbiter determines that the values are in excess of the maximum, he is required, under subsection (f) to reduce pro rata the amount of each claim. He will then certify the final awards to the Secretary of the Treasury for payment.

It will be noted that the awards entered by the arbiter bear interest at 5 per cent from July 2, 1921 (the date of the peace resolution), to December 31, 1928, rather than to January 1, 1928, as provided in the House bill. The amount of this interest is included within the \$100,000,000 limitation. After January 1, 1929, the awards bear interest at the rate of 5 per cent (upon the amounts remaining unpaid). The payment of this interest is made out of the special-deposit account out of funds received from Germany, counterbalancing the interest on the awards of the Mixed Claims Commission which are paid under the bill but for which Germany has not paid.

Subsection (l) of section 3 assures complete cooperation of the various executive departments with the arbiter in performing his functions, including the giving of information similar to that which the Court of Claims may call for from any of the executive departments (under section 188 of the Revised Statutes).

Subsection (m) of section 3 authorizes the appointment of officers, the fixing of their salaries, and the making of expenditures. The appointments are authorized without regard to civil service laws, and salaries may be fixed without regard to the classification act, for the reason that the work will be highly specialized and temporary and the arbiter should be accorded every assistance of permitting him to expedite his work and in assuring sound decisions.

Subsection (n) of section 3 provides for the termination of the office of arbiter upon the completion of his work. A Senate amendment makes proper provision for the additional duties imposed upon him in the adjudication of claims against Austria and Hungary.

Subsection (o) provides that claims may be presented to the arbiter only within four months from the date on which he takes office, and excludes claims, as a matter of precaution, if any judgment or decree awarding compensation or damages has already been rendered, if such judgment or decree has become final, and requires dismissal of

pending suits or proceedings. It will be noted that subsection (q) provides that this section shall be the exclusive method for the presentation and payment of claims for which this section provides a remedy.

Subsection (p) authorizes the necessary appropriation. It is expected that the \$50,000,000 will be appropriated immediately, and that the balance, if any, up to \$100,000,000, will be appropriated as the arbiter completes his work.

Subsection (r) protects the interests of the claimants, if it should appear that two or more persons are interested in the same ship, patent, or radio station. It provides that the arbiter shall apportion the amount of the award among them.

Subsection (s) permits the payment of not to exceed \$25,000,000 upon the tentative awards entered by the arbiter. This provision is necessary in order to prevent undue delay should the litigation involving the patents prove protracted.

FUNDS AVAILABLE FOR PAYMENT

The bill (in section 4) provides for the creation in the Treasury of a German special deposit account and provides that the following amounts shall be deposited therein:

(1) The 20 per cent of the German property temporarily retained by the Alien Property Custodian (approximately \$40,000,000);

(2) The unallocated interest fund (approximately \$25,000,000);

(3) The amount of the appropriations for the payment of ship claims; that is, the immediate appropriation of \$50,000,000 and the future appropriations, if any, for the balance (but 50 per cent is made available only for the payment of ship claims); and

(4) All receipts by the United States, whether before or after the enactment of the bill, in respect of claims of the United States against Germany on account of awards of the Mixed Claims Commission. This includes all receipts under the Paris agreement and all receipts under any future agreement which might take the place of the Paris agreement.

PRIORITY OF PAYMENTS

The bill (subdivision (c) of section 4) prescribes the priorities of payments out of the special deposit account.

These payments are to be made as follows:

(1) The expenses of the arbiter (including witness fees); and the administrative expenses of the Secretary of the Treasury not in excess of \$25,000 per annum, incurred in making the payments and in issuing the participating certificates and making payments thereon.

(2) The principal amount awarded by the Mixed Claims Commission on account of death or personal injury, and the interest thereon accruing before January 1, 1928, and interest at 5 per cent per annum upon the unpaid amount of such principal and interest from January 1, 1928, until the date of payment. In the case of an award based both upon a claim for death or personal injury and upon a claim for property damaged, for example, the amount of the award attributable to the claim for death or personal injury will be paid under this paragraph, and the balance of the award will be treated as a separate award and paid under the appropriate paragraph.

(3) The principal of each award and the interest thereon accruing before January 1, 1928, if the sum of such amount is less than \$100,000 and interest at 5 per cent per annum upon the unpaid amount of such principal and interest from January 1, 1928, until the date of payment. Under this paragraph and paragraph (2) the interest accruing after January 1, 1928, is made payable at the same time as the principal for purposes of administrative simplicity, for in such manner a very large percentage of the awards are immediately settled in full and the accounts closed.

(4) After the payments in paragraphs (2) and (3) (and there will be adequate money in the special deposit account to make such payments immediately), the amount of \$100,000 is paid upon each award remaining unpaid. In determining whether an award is payable under paragraph (3) or (4), it will be noted that the interest accruing prior to January 1, 1928, is added to the principal of the award, but that the amount to be deducted as reimbursement for the expenses incurred by the United States (under subdivision (e) of sec. 2) is not taken into consideration. It is also provided that if a person has more than one award he is to receive not more than \$100,000 in payment under both paragraphs, exclusive of the interest payable under paragraph (3) accruing after January 1, 1928. This provision, however, does not affect the amount of the payments in cases where more than two persons are interested in the same award, and accordingly not more than \$100,000 will be paid upon such an award, irrespective of the number of persons interested.

(5) Next there is to be distributed among the American nationals (not including the United States itself) such sums as will make the total payments to all of them (including payments already made under paragraphs (2), (3), and (4)) equal to 80 per cent of the sum of all awards (except to the United States on its own behalf) including interest thereon up to January 1, 1928. It should be noted that this is not the equivalent of paying each claimant 80 per cent of his award. Under the bill American private claimants are only given priority as a class up to 80 per cent of the total awards to them. If funds are not sufficient to give each claimant 80 per cent of his award, the funds are divided pro rata on the basis of amounts remaining unpaid. A committee amendment will authorize payments under this paragraph even though all awards have not been certified, a provision of particular importance because of the late claims amendment.

(6) Paragraph (6) provides for the payment of tentative awards of the arbiter, for which purpose the sum of \$25,000,000 has been set aside out of the appropriation.

(7) Paragraph (7) provides for the payment of 50 per cent of the amounts awarded in respect of ship, patent, and radio station claims. An amount equal to 50 per cent of the appropriations made under section 3 is segregated, under subsection (d), for payments under paragraphs (6) and (7).

(8) Having paid an amount equal to 80 per cent of the awards of the Mixed Claims Commission (in the priorities above explained) and the payment of the 50 per cent of the awards in respect of ship claims, the next payment from the funds in the special deposit account will be the accrued interest upon the 20 per cent of the alien property temporarily withheld.

(9) The payment of the accrued interest upon the amounts remaining unpaid of the awards of the Mixed Claims Commission and the awards upon ship claims is next in priority.

(10) After the above payments, the funds going into the special deposit account are to be applied in reducing the amounts remaining unpaid upon the awards of the Mixed Claims Commission, the ship awards, and in returning the 20 per cent of the alien property.

(11) The bill provides that, next in priority, the unallocated interest fund shall be returned to the German nationals, in the amounts (but not exceeding the amounts) allocated to them.

(12) Paragraph (12) of the bill provides for the payment into the Treasury of the amount of the awards to the United States on its own behalf.

(13) Paragraph (13) of the bill provides for the payment into the Treasury as miscellaneous receipts any funds remaining in the special deposit account after the payment above described.

Subsection (d) of section 4 of the bill provides for the segregation of 50 per cent of the amounts appropriated in respect of ship, patent, and radio-station claims.

Subsection (e) makes available the funds in the special deposit account, not in excess of \$25,000 per annum, for the expenses of the Secretary of the Treasury in making the payments under this section and in issuing participating certificates.

Subsection (f) permits the Secretary of the Treasury to invest the funds in the special deposit account in bonds, notes, or certificates of indebtedness of the United States, the earnings to be deposited in the account.

Subsection (g) is purely a precautionary provision. In certain cases an American creditor could file his claim with the Mixed Claims Commission and also proceed under section 9 of the trading with the enemy act to collect his debt out of any money or other property of the debtor in the hands of the Alien Property Custodian. The Mixed Claims Commission required the claimants to file waivers of their rights to proceed under the trading with the enemy act. It is believed that the waivers were filed and observed. However, as a precautionary measure, to prohibit double payment, subsection (g) provides that the amount collected from the Alien Property Custodian shall be credited against the amounts first payable under this section. Thus, for example, if the award is \$150,000, and the amount collected from the Alien Property Custodian was \$100,000, the claimant will be entitled to priority in the payment of the remaining \$50,000, only to the same extent as if the \$100,000 had been paid him by the Secretary of the Treasury under the terms of the bill. It will not be necessary for the Secretary of the Treasury to examine each award and obtain a certificate from the Mixed Claims Commission and the Alien Property Custodian before the making of the payment. It should be possible administratively for the Mixed Claims Commission to inform the Secretary of the Treasury as to the awards on account of debts, and for the Alien Property Custodian to inform the Secretary of the Treasury as to his payment on account of debts. These two statements should be sufficient, except in an extraordinary case where the facts indicate that additional information may be necessary, for the Secretary of the Treasury to determine whether there is any likelihood of a double payment.

CLAIMS OF AMERICANS AGAINST AUSTRIA AND HUNGARY

Section 5 of the bill, added by your committee, provides for the certification and payment in full of the awards to nationals of the United States against Austria and Hungary. The agreement under which the Tripartite Claims Commission was created provided for the presentation of claims within one year. This period seems to have been adequate (except that, of course, there will always be an occasional claim barred by the lapse of time, whatever period may be fixed), and your committee sees no necessity for an extension of time.

CLAIMS OF AUSTRIAN AND HUNGARIAN NATIONALS AGAINST THE UNITED STATES

Section 6 of the bill, added by your committee, provides for the adjudication by the arbiter of the claims of Austrian and Hungarian nationals against the United States. There are no claims on account of the taking of ships or radio stations. There appear to be, however, about 500 patents belonging to Austrian or Hungarian nationals which were used by the United States or which were licensed, assigned, or sold by the Alien Property Custodian to the United States, as in the case of patents owned by German nationals. The bill prescribes the same rule of compensation applicable to German nationals, making the necessary adjustments by reason of the later declaration of war and the earlier armistice.

It is estimated that \$1,000,000 will be adequate to provide just compensation in respect of the Austrian and Hungarian patents, and subsection (d) of this section fixes this amount as the maximum. It will be unnecessary to make an appropriation of this amount, however, until the awards are entered, whether before or after the entry of the awards in respect of German claims against the United States.

AUSTRIAN AND HUNGARIAN SPECIAL DEPOSIT ACCOUNTS

Section 7 (a) provides for the creation of an Austrian special deposit account and an Hungarian special deposit account, similar to the provisions of the bill creating the German special deposit account.

Under subsection (b) of section 7, the Secretary of the Treasury will deposit in the Austrian special deposit account the amount of the appropriations on account of the patent claims of Austrian nationals, the proceeds of the property of the Austrian Government held by the Alien Property Custodian (including the property of corporations all the stock of which was owned by Austria), and all payments received from Austria on account of awards against her; and, similarly, will deposit in the Hungarian special deposit account the amount of the appropriations on account of the patent claims of Hungarian nationals, the property of the Hungarian Government held by the Alien Property Custodian (including the property of corporations all the stock of which was owned by Hungary), and all payments received from Hungary on account of awards against her.

Subsection (c) provides that, as soon as a certificate, hereinafter described, is given, the payments may be made to the American claimants and to the Austrian and Hungarian nationals receiving

awards from the arbiter. The funds in the Austrian and Hungarian special deposit accounts will be immediately available, of course, for the payment of the expenses of administration. In order to prevent any delay in the proceedings of the arbiter because of lack of funds, however, the German special deposit account may be used in the first instance, with reimbursement from the Austrian or the Hungarian accounts. Of course, exact allocations will be quite impossible.

Subsection (d) of section 7 provides, that no payment shall be made to American claimants or on account of patent claims, and that no money or other property held by the Alien Property Custodian shall be returned, until the commissioner of the Tripartite Claims Commission certifies to the Secretary of the Treasury that the funds in the Austrian special deposit account are adequate to pay the awards against Austria, and certifies to the Secretary of the Treasury the rate of exchange to be applied to the interlocutory judgments of the commissioner and the period and rate of interest to be applied to such interlocutory judgments. The necessity for this latter provision arises out of the peculiar and rather complicated provisions of the treaty with Austria, all the details of which are fully discussed in Administrative Decision II of the commission. Your committee believes that these provisions are much preferable to any attempt to use the funds held by the Alien Property Custodian for the payment of the awards.

Subsection (e) contains provisions in respect of Hungary similar to those of subsection (d) just discussed.

Subsection (j) of this section provides that after the payment of all the claims, the amounts remaining in the Austrian special deposit account attributable to payments from Austria shall be returned to Austria and amounts remaining in the Hungarian special deposit account attributable to payments from Hungary shall be returned to Hungary; and that the amounts remaining out of any appropriation, after the payment of all patent claims, shall be returned to the Treasury. Any earnings upon the funds will be allocated (as nearly as can be done) and returned in the same manner.

FINALITY OF DECISIONS

Section 8 of the bill provides that the decisions of the Secretary of the Treasury in respect of the funds to be paid into the special deposit accounts and of the payments therefrom shall be final and conclusive, and not subject to review by any other officer of the United States, except that the payments out of the special deposit accounts necessary for expenses in administering that fund and the expenses of issuing the participating certificates evidencing the investment of the 20 per cent of the alien property retained shall be accounted for and settled through the usual channels. The section also provides that the Secretary of the Treasury, in his annual report to Congress, is to include a detailed statement of all expenditures made in carrying out the provisions of the bill.

EXCESSIVE FEES

Section 9 (a) of the bill, as amended by your committee, provides for the fixing of fees for services in connection with the proceedings

before the arbiter, the Mixed Claims Commission, or the Tripartite Claims Commission (including all services in connection with any preparation for the proceedings), by the arbiter, the American commissioner of the Mixed Claims Commission, and the commissioner of the Tripartite Claims Commission, respectively.

Subsection (b) prohibits any person from accepting any consideration prior to the fixing of the fees for his services, and prohibits him from receiving any consideration in excess of the fees so fixed. Many attorneys and representatives before the Mixed Claims Commission and the Tripartite Claims Commission have performed considerable services and have expended large amounts in connection with the claims of their clients. Others have performed substantially no work, but have permitted their cases to be governed by other pending cases and to be handled entirely by the American agent. Consequently, it is impossible to fix a maximum percentage. It is expected, however, that it will not be necessary to alter amounts fixed by contract with large corporations and others fully capable of protecting their own interests. In such cases the arbiter, American commissioner, and the tripartite commissioner would undoubtedly be justified in fixing the amounts specified in the contracts. In other cases, however, particularly where large contingent fees are specified, it is hoped that the fees ultimately fixed will bear a proper relation to the work performed and expenditures incurred.

Subsection (c) amends section 20 of the trading with the enemy act (which imposes a criminal penalty for receiving excessive fees for services in connection with the return of property in the hands of the Alien Property Custodian) so as to make the section applicable without question to attorneys at law as well as to attorneys in fact.

Subsection (d) provides an effective enforcement device for the provisions of the section, by declaring that any person who violates the provisions above described, whether or not he has been convicted, shall be ineligible to appear as an attorney at law before any department, agency, or officer in the executive branch of the Government. In view of the facts which have been brought to the attention of your committee, it is believed that very stringent provisions are necessary and are justifiable.

It should be pointed out that the provisions of this section can not operate to delay the payments of the awards.

INVESTMENT OF ALIEN PROPERTY TEMPORARILY RETAINED

Section 10 of the bill, as reported, provides for the investment of the 20 per cent of the property of German nationals, the return of which is temporarily postponed. This is effected by adding section 25 to the trading with the enemy act.

Section 25 (a) (1) provides for the investment, upon the request of the Secretary of the Treasury, of such amounts as the Secretary may determine to be necessary, out of the alien property funds. A limitation is placed at \$40,000,000, because this sum appears to be a safe estimate of the aggregate amount of the 20 per cent to be retained. Inasmuch as many of the funds are invested in securities, this section can be complied with by a transfer of the securities, fixing their value as of a specified date. Under the terms of the House bill, it would be necessary to wait until the written consents of the German owners were filed before any alien property funds could be transferred to

the special deposit account. Under the section as amended by your committee, \$40,000,000 will be made available as soon as the machinery for the payment of awards of the Mixed Claims Commission can be set up. The committee amendment also will greatly facilitate the administration of the provisions.

Section 25 (a) (2) provides for the necessary adjustments, in case the amounts invested under paragraph (1) are too large or too small. For example, if it should ultimately be determined that the 20 per cent of the alien property amounted to \$50,000,000, and if \$40,000,000 had previously been placed in the special deposit account under paragraph (1), the Alien Property Custodian would then transfer the remaining \$10,000,000 to the special deposit account, receiving therefor participating certificates in the same manner as in the case of the original investment. On the other hand, if the 20 per cent of the alien property should ultimately be decided to be \$30,000,000, under the circumstances set forth above, it would be necessary for the Secretary to pay at once out of the special deposit account the \$10,000,000 excess.

Section 25 (b) provides for the transfer to the German special deposit account of the so-called "unallocated interest fund" (described later in this report). The amount is estimated at \$25,000,000, and this amount will be transferred as soon as payments from the special deposit account can be made. Necessary adjustments will then be made in case this amount is greater or less than the portion of the unallocated interest fund attributable to funds of German nationals.

Section 25 (c) gives a prior claim upon the funds in the special deposit account if the amount under subsection (b) proves to be excessive.

Section 25 (d) provides for the deposit in the special deposit account of all the money and proceeds of all the property, including all income, etc., owned by the German Government or any member of the former ruling family. A committee amendment also provides that all money and other property shall be held to be owned by the German Government if no claim thereto has been filed prior to six months from the date of the enactment of the bill, or if the ownership thereof is not established. It is specifically provided that claims heretofore filed are sufficient for the purposes of this subsection. And, of course, there is no limitation attempted as to the date of the decision, for decisions upon the claims must await action by the custodian and the courts. This provision is designed primarily to cover the authorized trusts known as the "undisclosed enemy" trusts. It will be noted that all this property is subject to the claims on account of debts against the German Government, under section 9 of the trading with the enemy act.

Section 25 (e) provides for the issuance of participating certificates by the Secretary of the Treasury, as evidence of the investments by the Alien Property Custodian. In the case of the 20 per cent, the certificates will draw interest at the rate of 5 per cent. In the case of the unallocated interest fund, the certificates will not be interest bearing. Every precaution is made to protect the United States Government from any liability on account of the participating certificates. This subsection also prevents the assignment of any such certificate, in order that there may be no claims of innocent purchasers and in order to prevent any possibility of a quotation of

the certificates on the exchanges. It is believed that general transactions in the certificates might materially affect disadvantageously the market of the bonds and notes of the United States. However, it will be possible under section 25 (e) (2) for the Secretary of the Treasury and the Alien Property Custodian to agree upon the transfer of a certificate to a trustee, in a proper case, in order that that trustee may issue his certificates to the German nationals, for such use as the circumstances permit.

Section 25(f) provides for the payment of the amounts, as the participating certificates are redeemed, out of funds in the special deposit account (future payments from Germany).

Subsection (g) authorizes the transfer by the Alien Property Custodian to the Austrian or Hungarian special deposit account of all property held by him of the Austrian or Hungarian Government, or of any corporation all of the stock of which was owned by either the Austrian or Hungarian Government.

RETURN OF PROPERTY HELD BY THE ALIEN PROPERTY CUSTODIAN

The provisions of the bill providing for the return to German nationals of the property held by the Alien Property Custodian are in the form of amendments to the trading with the enemy act.

Section 11 of the bill proposes to add to subsection (b) of section 9 of the trading with the enemy act several new paragraphs. New paragraphs (12), (13), and (14) provide for the return of money or other property held by the Alien Property Custodian to citizens, partnerships, associations, or corporations of Germany. The return, however, is conditioned upon the filing of a written consent for the temporary retention of 20 per cent. It will be noted, however, that the proviso in paragraph (10) has no application and that all the money or other property of insurance companies can be returned under the new paragraphs added by the bill. Accordingly, there is no necessity to repeal the proviso.

Paragraph (15) provides for the return of the money or other property of the Austro-Hungarian Bank, to the liquidators of the bank. Under the House bill the liquidators were required to give a bond for the return to the Alien Property Custodian of all money or other property distributable to Austria or Hungary. Inasmuch as the Austrian and Hungarian Governments will deposit an amount sufficient to pay the awards of the Tripartite Claims Commission, your committee recommends that this provision be eliminated and that the return to the liquidators be subject to the same conditions as the return of property to nationals of Austria or of Hungary. It will be noted, however, that both Austria and Hungary must comply with the provisions of the act before the money will be returned to the liquidators. (See sec. 7 (d) and (e) of the bill.)

Paragraph (16) of the House bill contained provisions for the return to any individual, without regard to his citizenship or nationality, if he desired to file the written consent permitting the retention of 20 per cent of his property. Your committee has extended the provisions of this paragraph so as to make it applicable to partnerships, associations, and corporations, as well as to individuals. It will not be necessary for any person to apply for the return under paragraph (16) unless he desires to do so, for he is perfectly free to

proceed under any other provision of the act. If he elects to come under the provisions of paragraph (16), however, his election is binding and he will be entitled to the immediate return of only 80 per cent and to the future return of the remaining 20 per cent in the same manner as a German national, even though he should subsequently be able to prove that he was an American citizen or a citizen of any other country the citizens of which are entitled to the return of all their property.

Paragraphs (17), (18), (19), (20), (21), and (22), added by amendments recommended by your committee, provide for the return to citizens, partnerships, associations, and corporations of Austria or of Hungary.

RETURN IN CASE OF DEATH OF OWNER

Section 12 (a) of the bill amends subsection (d) of section 9 of the trading with the enemy act. Under the provisions of the existing law, in the case of the death of a person who would have been entitled to the return of his money or other property, the legal representative may obtain the return, but must give a bond for the return to the Alien Property Custodian of any portion distributable to persons who, because of their citizenship or nationality, would not themselves be entitled to the return of the property. For example, if an American citizen, whose property had been wrongfully seized by the Alien Property Custodian, died after the seizure, leaving an "enemy" heir, none of his money or other property could be distributed to the heir.

Under subsection (g) of section 9 of the existing law, if the heir in the case stated above happened to be an American citizen, all the money or other property would be returnable for distribution to him. Unusual complexities have arisen where both eligible and noneligible heirs exist, in making the proper distributions and the payment of debts and administration expenses.

In order to simplify the provisions of the existing law, your committee has recommended substitutes for the provisions of the House bill. The committee amendments base the right to the return of the property upon the status of the owner rather than upon the status of the distributee. If the owner was entitled to the return of all of his property, subsection (d) permits the return to the personal representative, without regard to the citizenship or the nationality of the distributees. This provision includes all persons eligible to claim under subsection (a) of section 9, or who are entitled to the return of all of their property under subsection (b) of section 9, as amended by the bill. Subsection (g) then is amended to apply to individuals who are entitled to the return of their property only upon the filing of a written consent to the temporary retention of 20 per cent of their property. If such a person dies, his personal representative merely acquires the same rights which he had, and is limited to the return of 80 per cent of the property, without regard to the citizenship or nationality of any of the distributees. A saving clause is added (the last sentence of subsection (g)) under which an American citizen may proceed under the existing law for the return of all of his property if the owner thereof died before the enactment of the settlement of war claims act.

The return of money or other property in the case of partnerships, associations, and corporations is covered by subsection (p), which will be explained hereinafter.

The House bill also amended subsection (d) of section 9 to permit the return to the foreign executor or administrator without the necessity of appointment by a court in the United States (a requirement which was imposed by the Alien Property Custodian) and also amended subsection (g) by removing from it the statutory requirement of the appointment by a court in the United States. These amendments are carried into the subsections as rewritten by your committee.

Under the existing law a creditor of a person whose property was seized by the Alien Property Custodian may file a claim and institute proceedings for the payment of the debt, under certain conditions. Inasmuch as these claimants have had more than 10 years in which to file their claims, this provision is amended by subsection (b) of section 12 of the proposed bill so as to permit payment only where the claim was filed prior to the date of the enactment of the bill.

In order to protect the interests of creditors of persons whose property will be returnable, a new section has been added (sec. 30) to the trading with the enemy act, which will be explained hereinafter.

RETURN OF PATENTS AND PROCEEDS FROM PATENTS

Under subsection (j) of section 9 of the existing law no patent could be returned which had been sold, licensed, or otherwise disposed of or which was involved in litigation, nor could the proceeds from the sale, license, or other disposition of any such patent be returned. Inasmuch as the Chemical Foundation case has now been decided, there is nothing to prevent the return of all patents, and such proceeds, still held by the Alien Property Custodian. Subsection (j) of section 9 of the existing law is accordingly amended to comprise two subsections, the first of which (subsec. (j)) provides for the return of patents which have been licensed, subject to any existing license, contract, lien, or encumbrance, and the second of which (subsec. (k)) provides for the return of the proceeds received from the sale, license, or other disposition. These subsections do not affect the sale to the Chemical Foundation nor the consideration received upon that sale, nor the sales to any other private interests.

Under subsection (f) of section 10 of the existing law the Alien Property Custodian has instituted certain suits as the "owner" of certain patents. In the event that it should ultimately be held that the suits were properly instituted the amendment proposed by the bill provides that section 9 shall apply to any royalties paid to him. Section 10 of the trading with the enemy act contains the provisions applicable (prior to any seizure by the Alien Property Custodian) to the licensing of patents, etc., prescribes the royalty to be paid, and gives to the owner of the patent the right to file a bill in equity against the licensee at any time before the expiration of one year after July 2, 1921, for the determination and payment of a reasonable royalty.

RETENTION OF 20 PER CENT OF ALIEN PROPERTY

Section 14 of the bill adds to section 9 of the trading with the enemy act several new subsections. Subsection (m) contains the provisions

relative to the retention of 20 per cent of the property of German nationals (including the persons to whom a return is made under paragraph (16) of subsection (b) or under subsection (g), as explained above, or under subsection (n), to be explained hereinafter). The 20 per cent will be deducted from any money held, or from the proceeds of the sale of property if the owner consents to the sale, or by the payment of the necessary amount to the Alien Property Custodian by the person entitled to the return. In anticipation of the final disposition of the matter, it is provided that the Alien Property Custodian may sell sufficient property without the consent of the owner after the expiration of six years. The sale will be subject to the provisions of section 12 of the trading with the enemy act. An amendment is recommended by your committee so that any sale may be made without regard to the citizenship or nationality of the purchaser, or of a person to whom a resale is to be made, or of a person for whose benefit the purchase is made. There is no sound reason why the sales should be restricted to citizens of the United States.

RETURN OF CORPORATE STOCK AND SECURITIES

Subsection (n) meets the situation which has arisen by reason of the fact that certain corporate interests were seized without obtaining custody of the certificate evidencing those interests. As a result the certificate has been sold in Germany and is being dealt in daily on the German exchanges. Although the committee was convinced that it could not adopt a policy of general recognition of assignments, it seemed imperative that this situation be met. Accordingly, subsection (n) provides for the recognition of the various assignments and for payment to the present owner of the certificate. In order to prevent evasion, however, it is necessary to limit the return, irrespective of the citizenship of the present owner, to the 80 per cent. This subsection also adopts all the provisions of section 9; accordingly, a person entitled to a return under this subsection may file claim and bring suit, and, in the event of his death, his legal representative may file a claim or bring suit, and the provisions requiring a release and prescribing the effect of the release will be applicable.

A SAVING OF RIGHTS UNDER EXISTING LAW

Subsection (o) saves all rights under the existing law, with the exception of the rights of the person who avails himself of the privilege of the option to come within the provisions of paragraph (16) of section (b). For example, there are a large number of claimants who have not yet filed their claims under the Winslow Act. It is believed that these rights should be protected.

DISSOLUTION OF CORPORATIONS

As explained above, subsections (d) and (g) of section 9, as rewritten by your committee, cover the cases of the death of the owner of the property after its seizure by the custodian. Subsection (p) is accordingly amended to cover the case of the termination of the existence of a partnership, association, or corporation. Under the provisions of this subsection the property of a dissolved cor-

poration, for example, will be transferred to the names of the stockholders, and the stockholders will proceed for its return in the same manner as though the property were seized from them.

Subsection (a) of section 9 of the trading with the enemy act (subject to the limitations of subsection (e)) provides that a person to whom a debt may be owing from an alien whose property is held by the Alien Property Custodian, may collect the amount of his debt out of this property. Cases have arisen where, by reason of the dissolution of the corporation owning the property at the time of seizure by the Alien Property Custodian, the property has, in effect, become the property of the stockholder. A technical interpretation of the present law may prevent making this property liable for the debts of the stockholder. Subsection (b) cares for this situation so that the provisions of section 9 relating to collection of debts out of property held by the Alien Property Custodian shall be applicable to the debts of the successor, and so that such debt shall be collected out of the property to which he has succeeded, to the extent that it is not already chargeable with the debts of the predecessor. The section has important illustration in the case of debts owing by the German Government. Judgments have already been rendered by the courts under which the entire amount of the property which can be identified as belonging to the German Government has been paid out in satisfaction of debts of that Government. It now appears that the German Government by reason of the dissolution of certain corporations in which it was the chief stockholder has become entitled to the corporate assets. This subsection will make this amount available to satisfy the unpaid portion of these judgments in respect of debts of the German Government.

RETURN TO AUSTRIAN AND HUNGARIAN NATIONALS

The conditions upon the return to Austrian and Hungarian nationals of property held by the Alien Property Custodian have already been explained. These provisions, however, appear in the settlement of war claims act. In order to give notice of these conditions, subsection (q) places in the trading with the enemy act a cross reference to the limitations.

THE UNALLOCATED INTEREST FUND

A fund of approximately \$32,000,000 (commonly called the "unallocated-interest fund") exists in the Treasury as a result of interest paid upon bonds purchased with money deposited in the Treasury by the Alien Property Custodian and accruing prior to March 4, 1923, together with the gain derived from sale of such bonds, and the earnings upon the earnings (even though accruing after March 4, 1923). Under the Winslow Act only earnings accruing after March 4, 1923, upon money deposited in the Treasury have been returned. This fund consists of earnings owing to American citizens, citizens of allied and neutral countries, citizens of countries with which we were at war but which subsequent to the armistice became allies, and citizens of Germany, Austria, and Hungary.

Section 15 of the bill adds several new sections to the trading with the enemy act. Section 26 deals with the unallocated interest fund.

Section 26 (a) requires the Alien Property Custodian to allocate among the various trusts the funds in the unallocated interest fund. The House bill provides that the allocation shall be made under regulations prescribed by the Secretary of the Treasury. In order to permit the use of the records kept by the Alien Property Custodian, a committee amendment provides that the allocation shall be made by the Alien Property Custodian.

Section 26 (b) provides for the payment of the amounts so allocated to the persons entitled thereto, except in the case of German nationals and others who are entitled to the return of only 80 per cent. The Supreme Court decided in *Henkels v. Sutherland* (May 24, 1926) that an American citizen is entitled to his share of the earnings. Through decisions of the lower courts and opinions of the Attorney General, this decision has been extended to citizens of allied or neutral countries and to persons who are entitled to the return of all their property, even though they may have been "enemies" or "allies of enemies." Inasmuch as these decisions and opinions will be applicable to Austrian and Hungarian nationals, after the bill becomes law (for they will be entitled to return of all their property without limitation), the provisions of the House bill (subsection (d) of section 26) which were applicable to the Austrian and Hungarian interests in the unallocated interest fund are stricken out.

Section 26 (c) provides for the retention of so much of the unallocated interest fund as is attributable to the interests of German nationals, including persons to whom return is made subject to the retention of the 20 per cent and including those whose property was returned under paragraph (9) or (10) of section 9 (b). It also provides that any amount in excess of the \$25,000,000 originally deposited in the German special deposit account shall likewise be placed in the special deposit account; and provides for the pro rata distribution among the German nationals, as the payments are made under paragraph (11) of subsection (b) of section 4 of the settlement of war claims act.

Section 26 (d) rewrites, in simplified form, the provisions of section 26 (e) of the House bill, and also provides for the payment out of the unallocated interest fund of the costs of making the allocation.

CONSIDERATION HERETOFORE PAID FOR PATENTS

As explained above, the United States paid approximately \$105,000 to the Alien Property Custodian on account of the patents which were licensed, sold, or assigned by him to the United States. This amount was arbitrarily arrived at, and no attempt has been made to allocate it among the patents. The simplest procedure is to provide for the return of this amount to the United States, in order to permit the arbiter to determine the consideration which should be paid and to disregard this amount. Section 27 of the bill so provides.

DEFINITION OF "UNALLOCATED INTEREST FUND"

Section 28 of the bill contains a definition of the "unallocated interest fund," which has heretofore been discussed. It will be noted that the fund includes the gains realized from the sale of the securities. Although the Winslow Act provided for the return of all

earnings accruing on or after March 4, 1923, its provisions do not cover the earnings and profits as a result of the investment or sale of securities representing earnings and profits accumulated prior to March 4, 1923. These amounts are included in the unallocated interest fund.

COMPROMISE OF DEMANDS BY THE ALIEN PROPERTY CUSTODIAN

There are many cases where the Alien Property Custodian, acting under the provisions of the trading with the enemy act, has made demands upon enemies and allies of enemies and upon persons holding their property for the delivery or payment to him of such property. In the case of German nationals and others who are entitled under the bill to the immediate return of 80 per cent of the money, it is an unnecessary burden to require the payment under these demands of the Alien Property Custodian, inasmuch as upon the collection of the amount of the demand it would be his duty to immediately return all or at least 80 per cent of it. Section 29 authorizes the Alien Property Custodian (with the approval of the Attorney General) to waive or compromise these demands on such terms and conditions as he may prescribe, if, as a result of the transaction, there will remain in his hands 20 per cent of the total amount of the money or other property belonging to the alien and seized or subject to seizure by the Alien Property Custodian.

Section 29 (c) is added by your committee, in order to provide for the release of demands and the settlement of suits involving Austrian and Hungarian nationals. Your committee also recommends an amendment to the effect that the action of the Alien Property Custodian under this subsection shall be subject to the approval of the Attorney General.

Section 29 (d), added by your committee, is a saving clause, in order to safeguard against any possible construction to the effect that the bill affects pending suits involving the transactions of the Alien Property Custodian, except in those cases where the Alien Property Custodian exercises the power granted him under section 29. In all other cases the suits will be continued in the same manner as though this bill had not become law.

PROTECTION OF CREDITORS

Your committee recommends the addition of section 30, in order to provide protection for the creditors of those whose property is held by the Alien Property Custodian. Section 9 (a) of the Trading with the Enemy act, as qualified by section 9 (e), provides the only recourse of a creditor, and these provisions are decidedly limited. Accordingly, your committee recommends that any money or other property returnable under subsection (b) or (n) shall be subject to attachment. The provision does not permit, of course, the physical taking possession of the property.

DEFINITION OF "MEMBER OF FORMER RULING FAMILY"

Section 31, added by your committee, carries into the trading with the enemy act a definition of the term "member of the former ruling family" similar to the definition written into the settlement of war claims act.

FUGITIVES FROM JUSTICE

Section 16 of the bill amends section 22 of the trading with the enemy act, in order that there may be no doubt but that the provisions of this section will apply to the return of money or other property under the amendments made by the bill.

RETURN OF INCOME

Section 17 of the bill amends section 23 of the trading with the enemy act, in order to provide for the return, without limitation, of all earnings, etc., accruing and collected after March 4, 1923. Under the present law there is a limitation that not more than \$10,000 of such earning can be returned in any one year.

TAXATION

Section 18 of the bill amends section 24 of the trading with the enemy act, by adding thereto several new subsections, covering Federal taxation in the case of persons whose property has been seized by the Alien Property Custodian. The provisions of the House bill provide merely that the amount of the taxes 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. The committee amendment goes much further than this, and attempts to provide equitable rules for the determination of the various tax liabilities.

Your committee believes that any gain resulting from the sale of assets by the Alien Property Custodian (whether owned by an individual or a corporation at the time of seizure) should be subject only to a 12½ per cent tax, because of the fact that the sale very likely would not have been made had the property been retained by the owner and, accordingly, the high tax rates of the war years would not have been applicable. For convenience, the provisions of section 208 of the Revenue Act of 1926 are adopted by reference and made applicable to all taxpayers involved. The committee amendment also makes certain that the involuntary conversion provisions of the various revenue laws and regulations will be applicable. Inasmuch as the owner of the property was unable to take any action in respect of the payment of taxes, it is also provided that the provisions of the various laws relating to interest and civil penalties (the provisions usually referred to in the revenue laws as interest, penalties, additions to the tax, or additional amounts) will not be collected. Inasmuch as the owner of the property had no opportunity to know how much taxes were paid by the Alien Property Custodian and in many cases no opportunity to file a claim, within the statutory period, for a refund of any excessive amounts paid, it is provided that claims may be filed, within six months after the bill becomes law, with the same effect as though filed within the statutory period applicable thereto. It will be noted that full power to prescribe regulations for the application of the provisions is given to the Secretary of the Treasury in order to prevent prolonged litigation.

SHIP CLAIMS OF DANISH NATIONALS

The attention of the committee was invited, through the transmittal of a communication from the Danish minister, to the fact that two of the ships seized were owned at the outbreak of the war by German nationals who have, as a result of the plebiscite under the treaty of Versailles, become Danish nationals. Inasmuch as all the property held by the Alien Property Custodian of nationals in similar circumstances has been returned without limitation, your committee believes that the above ship claims are entitled to similar treatment. Accordingly, your committee recommends the addition of a new section (sec. 19) providing that these claims may be presented to the arbiter and awards made in respect thereof. These awards are not to be reduced, but a limitation is placed so that the amount of the award will not exceed the amount received by the United States upon the sale of the vessel, minus the capital expenditures thereon. A special appropriation is authorized for the payment of these awards. The testimony before the committee did not reveal all the facts relating to the ownership of the ships. Accordingly, a provision is inserted to the effect that the ships must be owned entirely by a partnership, association, or corporation, and that all the German nationals having an interest therein became Danish nationals (or nationals of any country other than Germany), under the plebiscite referred to above.

DEFINITIONS

Section 20 of the bill contains definitions of the terms used in the settlement of war claims act. These definitions are not, of course, applicable to the trading with the enemy act. Your committee adds the necessary definitions of the terms applicable in the settlement of the Austrian and Hungarian situation.

X. SUMMARY OF STATISTICS

Mixed Claims Commission's awards to American nationals

1. 385 death and personal injury awards:		
Principal.....	\$3,387,030.00	
Interest at 5 per cent thereon to Jan. 1, 1928.....	705,245.60	
	<hr/>	
Total allowed to Jan. 23, 1928, with interest to Jan. 1, 1928.....		\$4,092,275.60
2. 3,046 awards (to different claimants) of \$100,000 and less:		
Principal.....	\$18,450,479.40	
Interest at rates fixed by awards (generally 5 per cent) to Jan. 1, 1928..	8,159,727.46	
	<hr/>	
Total allowed to Jan. 23, 1928, with interest to Jan. 1, 1928.....	26,610,206.86	
Estimated yet to be allowed—		
Principal.....	\$2,000,000	
Interest to Jan. 1, 1928....	800,000	
	<hr/>	
	2,800,000.00	
	<hr/>	
		29,410,206.86

3. 162 awards over \$100,000:

Principal.....	\$89, 004, 192. 57
Interest at rates fixed by awards (generally 5 per cent) to Jan. 1, 1928.....	40, 221, 487. 50
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Total allowed to Jan. 23, 1928, with interest to Jan. 1, 1928.....	129, 225, 680. 07
16 estimated yet to be allowed—	
Principal.....	\$20, 000, 000
Interest to Jan. 1, 1928.....	9, 000, 000
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	29, 000, 000. 00
	<hr/>
	\$158, 225, 680. 07
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Total estimated awards with interest to January 1, 1928.....	191, 728, 162. 53

Estimated credits to special deposit account

1. 20 per cent of German property (A. P. C.) to be temporarily retained.....	\$40, 000, 000
2. German share of unallocated interest fund.....	25, 000, 000
3. Mixed claims receipts, 2¼ per cent to Sept. 1, 1928.....	23, 000, 000
4. One-half appropriation for ships, patents, and radio station.....	25, 000, 000
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Total available for expenditures.....	\$113, 000, 000. 00

Estimated expenditures from special deposit account

1. Death and personal injury claims in full....	\$4, 092, 275. 60
2. All awards up to and including \$100,000....	29, 410, 206. 86
3. \$100,000 each on all other awards (178)....	17, 800, 000. 00
<hr/>	
	51, 302, 482. 46
Assuming payments are to be made Sept. 1, 1928, add interest at 5 per cent from Jan. 1, 1928.....	1, 710, 000. 00
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	53, 012, 482. 46
Interest at 5 per cent from Jan. 1, 1928, on balance of 80 per cent (\$153,400,000 less \$51,302,482.46) to Sept. 1, 1928.....	3, 263, 000. 00
Balance to be apportioned on claims over \$100,000.....	56, 724, 517. 54
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	\$113, 000, 000. 00

80 per cent of total mixed claims awards (\$191,728,162.53).....	153, 400, 000
Interest at 5 per cent thereon from Jan. 1, 1928 to Sept. 1, 1928.....	5, 113, 000

158, 513, 000

Total available receipts to be applied on account as of Sept. 1, 1928.....	113, 000, 000
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Balance of unpaid awards (80 per cent) subject to priority in Dawes annuities received after Sept. 1, 1928.....	45, 513, 000
Interest on this balance at 5 per cent from Sept. 1, 1928, to Sept. 1, 1929.....	2, 276, 000

Total priority due end of fifth Dawes year (1929).....	47, 789, 000
Dawes annuity for 1929.....	\$10, 700, 000
One-half additional appropriation for ships, patents, and radio station, etc. (maximum)....	25, 000, 000
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	35, 700, 000

Balance of priority unpaid Sept. 1, 1929.....	12, 089, 000
Interest at 5 per cent on this balance from Sept. 1, 1929, to Sept. 1, 1930.....	604, 000

Total priority due end of sixth Dawes year (1930)..... 12, 693, 000

(a) Interest at 5 per cent from Jan. 1, 1928, to Sept 1, 1930, on \$37,300,000 (20 per cent) mixed claims awards deferred.....	\$4, 975, 000	
(b) Interest at 5 per cent from Sept. 1, 1928, to Sept. 1, 1930, on \$40,000,000 participating certificates delivered to Alien Property Custodian for 20 per cent of German property retained.....	4, 000, 000	
(c) Interest at 5 per cent from Dec. 31, 1928, to Sept. 1, 1930, on \$50,000,000 due ships, patents, and radio station claimants for one-half appropriation used to pay mixed claims (2¼ per cent).....	4, 200, 000	
		\$13, 175, 000
Total		25, 868, 000
Dawes annuity for 1930.....		10, 700, 000
Balance accrued interest to Sept. 1, 1930, under (a), (b), and (c) above.....		15, 168, 000
Interest at 5 per cent from Sept. 1, 1930, to Sept. 1, 1931, on principal set out under (a), (b), and (c) above.....		6, 365, 000
Total interest due Sept. 1, 1931		21, 533, 000
Dawes annuity for 1931.....		10, 700, 000
Balance accrued interest to Sept. 1, 1931, under (a), (b), and (c) above.....		10, 833, 000
Interest at 5 per cent from Sept. 1, 1931, to Sept. 1, 1932, on principal set out under (a), (b), and (c) above.....		6, 365, 000
		17, 198, 000
Dawes annuity for 1932.....		10, 700, 000
Balance accrued interest to Sept. 1, 1932, under (a), (b), and (c) above.....		6, 498, 000
Interest at 5 per cent per annum from Sept. 1, 1932, to Sept. 1, 1933, on principal set out under (a), (b), and (c) above.....		6, 365, 000
		12, 863, 000
Dawes annuity for 1933.....		10, 700, 000
Balance accrued interest to Sept. 1, 1933, on principal set out under (a), (b), and (c) above.....		2, 163, 000
Interest at 5 per cent per annum from Sept. 1, 1933, to Sept. 1, 1934, on principal set out under (a), (b), and (c) above.....		6, 365, 000
Total interest due Sept. 1, 1934		8, 528, 000
Dawes annuity for 1934.....		10, 700, 000
Balance of 1934 Dawes annuity remaining to be applied Sept. 1, 1934, to principal of deferred amounts under (a), (b), and (c) above.....		2, 172, 000

\$127,300,000—\$2,172,000=\$125,128,000. To amortize \$125,128,000 at 5 per cent out of an annuity of \$10,700,000 will require approximately 18 years after September 1, 1934.

Total time required—

To pay 80 per cent to American claimants, together with interest thereon and interest on deferred payments.....	Years 6
To pay balance due American claimants (20 per cent), alien property owners (20 per cent), and owners of ships, patents, and radio station (50 per cent)—\$125,128,000 with interest.....	18
To pay off \$25,000,000 unallocated interest fund, without interest.....	2½

From and after Sept. 1, 1928..... 26¾