

RETURN OF ALIEN PROPERTY

HEARINGS BEFORE THE COMMITTEE ON FINANCE UNITED STATES SENATE SIXTY-NINTH CONGRESS SECOND SESSION ON **H. R. 15009**

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

JANUARY 8 TO 21, 1927

Printed for the use of the Committee on Finance



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RETURN OF ALIEN PROPERTY

SATURDAY, JANUARY 8, 1927

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

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

Present: Senators Smoot (chairman), McLean, Curtis, Watson, Reed of Pennsylvania, Wadsworth, Shortridge, Edge, Jones, Harrison, King, Bayard, and George.

Present also: Representatives Mills, of New York, and Garner of Texas; Undersecretary of the Treasury Winston.

(The committee had under consideration H. R. 15009, which is here printed in full, as follows:)

[H. R. 15009, Sixty-ninth Congress, second session]

AN ACT To provide for the settlement of certain claims of American nationals against Germany and of German nationals against the United States, for the ultimate return of all property of German nationals held by the Alien Property Custodian, and for the equitable apportionment among all claimants of certain available funds

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this act may be cited as the "Settlement of war claims act of 1927."

DECLARATION OF POLICY

SEC. 2. In pursuance of established American doctrine, it is hereby declared that the claims of nationals of the United States against Germany, as determined by the Mixed Claims Commission, United States and Germany, shall be settled by the ultimate payment in full by Germany; that all property of German nationals held by the Alien Property Custodian as security for the payment of such claims of nationals of the United States against Germany shall ultimately be returned, together with the accrued interest and other earnings thereon; that the claims of German nationals against the United States for reasonable compensation for certain of their ships, radio stations, and patents taken or used by the United States shall be adjudicated and the amounts determined to be due shall ultimately be paid in full.

CLAIMS OF NATIONALS OF THE UNITED STATES AGAINST GERMANY

SEC. 3. (a) The Secretary of State shall, from time to time, certify to the Secretary of the Treasury the award of the Mixed Claims Commission, United States and Germany, established in pursuance of the agreement of August 10, 1922, between the United States and Germany (referred to in this act as the "Mixed Claims Commission").

(b) The Secretary of the Treasury is authorized and directed to pay an amount equal to the principal of each award so certified, plus the interest thereon, at the rate fixed in the award, accruing before January 1, 1927.

(c) The Secretary of the Treasury is authorized and directed to pay annually (as nearly as may be) simple interest, at the rate of 5 per centum per

annum, upon the amounts payable under subdivision (b) and remaining unpaid, beginning January 1, 1927, until paid.

(d) The payments authorized by subdivision (b) or (c) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe, but only out of the special deposit account created by section 5, within the limitations hereinafter prescribed, and in the order of priority provided in subdivision (c) of section 5.

(e) There shall be deducted from the amount of each payment, as reimbursement for the expenses incurred by the United States in respect thereof, an amount equal to one-half of 1 per centum thereof. In computing the amounts payable under subdivision (c) of section 5 the fact that such deduction is required to be made from the payment when computed or that such deduction has been made from prior payments, shall be disregarded.

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

(g) No payment shall be made under this section unless application therefor is made, within two years after the date of the enactment of this act, in accordance with such regulations as the Secretary of the Treasury may prescribe. Payment shall be made only to the person on behalf of whom the award was made, except that—

(1) If such person is deceased or is under a legal disability, payment shall be made to his legal representative, except that if the payment is not over \$500 it may be made to the persons found by the Secretary of the Treasury to be entitled thereto, without the necessity of compliance with the requirements of law in respect of the administration of estates;

(2) In the case of a partnership, association, or corporation, the existence of which has been terminated, payment shall be made, except as provided in paragraphs (3) and (4), to the person found by the Secretary of the Treasury to be entitled thereto;

(3) If a receiver or trustee for any such person has been duly appointed by a court in the United States and has not been discharged prior to the date of payment, payment shall be made to the receiver or trustee or in accordance with the order of the court; and

(4) In the case of an assignment of an award, or in assignment (prior to the making of the award) of the claim in respect of which the award was made, by a receiver or trustee for any such person, duly appointed by a court in the United States, such payment shall be made to the assignee.

(h) Nothing in this section shall be construed as the assumption of a liability by the United States for the payment of the awards of the Mixed Claims Commission, nor shall any payment under this section be construed as the satisfaction, in whole or in part, of any of such awards, or as extinguishing or diminishing the liability of Germany for the satisfaction in full of such awards, but shall be considered only as an advance by the United States until all the payments from Germany in satisfaction of the awards have been received. Upon any payment under this section of an amount in respect of an award, the rights in respect of the award and of the claim in respect of which the award was made shall be held to have been assigned pro tanto to the United States, to be enforced by and on behalf of the United States against Germany, in the same manner and to the same extent as such rights would be enforced on behalf of the American national.

(i) Any person who makes application for payment under this section shall be held to have consented to all the provisions of this act.

CLAIMS OF GERMAN NATIONALS AGAINST UNITED STATES

SEC. 4. (a) There shall be a German claims arbiter (hereinafter referred to as the "Arbiter"), who shall be appointed by the President, at a salary to be fixed by the President not in excess of \$15,000 a year; or any officer or agent of the United States may be designated by the President as arbiter. Any officer or agent so designated shall receive as arbiter, notwithstanding any other provision of law, a salary to be fixed by the President in an amount, if any, which when added to any other salary will make his total salary from the United States not in excess of \$15,000 a year.

(b) It shall be the duty of the arbiter, within the limitations hereinafter prescribed, to hear the claims of any German national (as hereinafter defined), and to determine the fair compensation to be paid by the United States, in respect of—

(1) Any merchant vessel (including any equipment, appurtenances, and property contained therein), title to which was taken by or on behalf of the United States under the authority of the joint resolution of May 12, 1917 (Fortieth Statutes, page 75). Such compensation shall be the fair value, as nearly as may be determined, of such vessel to the owner immediately prior to the time exclusive possession was taken under the authority of such joint resolution, and in its condition at such time, taking into consideration the fact that such owner could not use or permit the use of such vessel, or charter or sell or otherwise dispose of such vessel for use or delivery, prior to the termination of the war, and that the war was not terminated until July 2, 1921, except that there shall be deducted from such value any consideration paid for such vessel by the United States.

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

(3) Any patent (or any right therein or claim thereto, and including an application therefor and any patent issued pursuant to any such application) which was licensed, assigned, or sold by the Alien Property Custodian to the United States. Such compensation shall be the amount, as nearly as may be determined, which would have been paid if such patent, right, claim, or application had been licensed, assigned, or sold to the United States by a citizen of the United States, except that there shall be deducted from such amount any consideration paid therefor by the United States (other than consideration which is returned to the United States under section 27 of the trading with the enemy act, as amended).

(4) The use by or for the United States of any invention described in and covered by any patent (including an application therefor and any patent issued pursuant to any such application) which was conveyed, transferred, or assigned to, or seized by, the Alien Property Custodian, but not including any use during any period between April 6, 1917, and November 11, 1918, both dates inclusive, or on or after the date on which such patent was licensed, assigned, or sold by the Alien Property Custodian. In determining such compensation, any defense, general or special, available to a defendant in an action for infringement or in any suit in equity for relief against an alleged infringement, shall be available to the United States.

(c) The proceedings of the arbiter shall be conducted in accordance with such rules of procedure as he may prescribe. The arbiter, or any referee designated by him, is authorized to administer oaths, to hold hearings at such places within or without the United States as the arbiter deems necessary, and to contract for the reporting of such hearings. Any witness appearing for the United States before the arbiter or any such referee at any place within or without the United States may be paid the same fees and mileage as witnesses in courts of the United States. Such payments shall be made out of any funds in the special deposit account hereinafter provided for and may be made in advance.

(d) The arbiter may, from time to time, and shall, upon the determination by him of the fair compensation in respect of all such vessels, radio stations, and patents, make a tentative award to each claimant of the fair compensation to be paid in respect of his claim, including simple interest, at the rate of 5 per centum per annum, on the amount of such compensation from July 2, 1921, to January 1, 1927.

(e) The total amount to be awarded under this section shall not exceed \$100,000,000, minus the sum of (1) the expenditures in carrying out the provisions of this section (including a reasonable estimate for such expenditures to be incurred prior to the expiration of the term of office of the arbiter), and (2) the aggregate consideration paid by the United States in respect of the acquisition of such vessels and radio stations, and the use, license, assignment, and sale of such patents (other than consideration which is returned to the

United States under section 27 of the trading with the enemy act, as amended).

(f) If the aggregate amount of the tentative awards exceeds the amount which may be awarded under subdivision (e), the arbiter shall reduce pro rata the amount of each tentative award. The arbiter shall enter an award of the amount to be paid such claimant, and thereupon shall certify such awards to the Secretary of the Treasury.

(g) The Secretary of the Treasury is authorized and directed to pay the amount of the awards certified under subdivision (f).

(h) The Secretary of the Treasury is authorized and directed to pay annually (as nearly as may be) simple interest, at the rate of 5 per centum, upon the amount of any such award remaining unpaid, beginning January 1, 1927, until paid.

(i) The payments authorized by subdivision (g), (h), or (s) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe, but only out of the special deposit account created by section 5, within the limitations hereinafter prescribed, and in the order of priority provided in subdivisions (c) and (d) of section 5.

(j) The Secretary of the Treasury shall not pay any amount in respect of any award made in respect of any claim by or on behalf of the German Government or any member of the former ruling family, but the amount of any such award shall be credited upon the final payment due the United States from the German Government for the purpose of satisfying the awards of the Mixed Claims Commission.

(k) No payment shall be made under this section unless application therefor is made within two years after the date the award is certified, in accordance with such regulations as the Secretary of the Treasury may prescribe. Payment of any amount in respect of any award may be made, in the discretion of the Secretary of the Treasury, in money of the United States or in lawful German money, and shall be made only to the person on behalf of whom the award was made, except that—

(1) If such person is deceased or is under a legal disability, payment shall be made to his legal representative, except that if the payment is not over \$500 it may be made to the persons found by the Secretary of the Treasury to be entitled thereto, without the necessity of compliance with the requirements of law in respect of the administration of estates;

(2) In the case of a partnership, association, or corporation, the existence of which has been terminated, payment shall be made, except as provided in paragraphs (3) and (4), to the person who, in the opinion of the Secretary of the Treasury, is entitled thereto;

(3) If a receiver or trustee for any such person has been duly appointed by a court of competent jurisdiction and has not been discharged prior to the date of payment, payment shall be made to the receiver or trustee or in accordance with the order of the court; and

(4) In the case of an assignment of an award, or of an assignment (prior to the making of the award) of the claim in respect of which such award was made, by a receiver or trustee for any such person, duly appointed by a court of competent jurisdiction, payment shall be made to the assignee.

(l) The head of any executive department, independent establishment or agency in the executive branch of the Government, including the Alien Property Custodian and the Comptroller General, shall, upon request of the arbiter, furnish such records, documents, papers, correspondence, and information in the possession of such department or independent establishment as may assist the arbiter, furnish him statements and assistance of the same character as is described in section 188 of the Revised Statutes, and may temporarily detail any officers or employees of such department or independent establishment to assist the arbiter, or to act as a referee, in carrying out the provisions of this section. The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States in the proceedings under this section.

(m) The arbiter, with the approval of the Secretary of the Treasury, is authorized to (1) appoint and fix the salaries of such officers, referees, and employees, without regard to the civil service laws and regulations or to the classification act of 1923, and (2) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, law books, periodicals, books of reference, and printing and binding), as may be necessary for carrying out the provisions of this section and within the

funds available therefor. Any officer or employee detailed or assigned under subdivision (1) shall be entitled to receive (notwithstanding any provision of law to the contrary) such additional compensation as the arbiter, with the approval of the Secretary of the Treasury, may prescribe. The arbiter and officers and employees appointed, detailed, or assigned shall be entitled to receive their necessary traveling expenses and actual expenses incurred for subsistence (without regard to any limitations imposed by law) while away from the District of Columbia on business required by this section.

(n) On the date on which the awards are certified to the Secretary of the Treasury under subdivision (f), or the date on which the tentative awards are certified to the Secretary of State under subdivision (t), whichever date is later, the terms of office of the arbiter, and of the officers and employees appointed by the arbiter, shall expire, and the books, papers, records, correspondence, property, and equipment of the office shall be transferred to the Department of the Treasury.

(o) No award or tentative award shall be made by the arbiter in respect of any claim if (1) such claim is filed after the expiration of four months from the date on which the arbiter takes office, or (2) any judgment or decree awarding compensation or damages in respect thereof has been rendered against the United States, and if such judgment or decree has become final (whether before or after the enactment of this act), or (3) any suit or proceeding against the United States, or any agency thereof, is commenced or is pending in respect thereof and is not dismissed upon motion of the person by or on behalf of whom it was commenced, made before the expiration of six months from the date on which the arbiter takes office and before any judgment or decree awarding compensation or damages becomes final.

(p) There is hereby authorized to be appropriated, to be immediately available and to remain available until expended, the sum of \$50,000,000, and, after the date on which the awards of the arbiter are certified to the Secretary of the Treasury, such additional amounts as, when added to the amounts previously appropriated, will be equivalent to the aggregate amount of such awards plus the amounts necessary for the expenditures authorized by subdivisions (c) and (m) of this section, except that the aggregate of such appropriations shall not exceed \$100,000,000.

(q) The provisions of this section shall constitute the exclusive method for the presentation and payment of claims arising out of any of the acts by or on behalf of the United States for which this section provides a remedy. Any person who files any claim or makes application for any payment under this section shall be held to have consented to all the provisions of this act.

(r) If the aggregate amount to be awarded in respect of any vessel, radio station, or patent is awarded in respect of two or more claims, such amounts shall be apportioned among such claims by the arbiter as he determines to be just and equitable and as the interests of the claimants may appear.

(s) The Secretary of the Treasury, upon the certification of any of the tentative awards made under subdivision (d) and the recommendation of the arbiter, may make such pro rata payments in respect of such tentative awards as he deems advisable, but the aggregate of such payments shall not exceed \$25,000,000.

(t) It shall be the duty of the arbiter to hear and determine the claims of any Austrian or Hungarian national (as hereinafter defined), for fair compensation in respect of the same classes of property, and of the same acts by or on behalf of the United States, and under the same conditions and subject to the same rules, as in the case of claims of a German national, except that the provisions of subdivisions (e) and (q) shall not be applicable, and except that the duties of the arbiter under this subdivision shall terminate when he has made and transmitted to the Secretary of State a tentative award to each claimant of the fair compensation in respect of his claim, including simple interest, at the rate of 5 per centum per annum, on the amount of such compensation, from July 2, 1921, to January 1, 1927. Such tentative awards shall be filed in the records of the State Department and preserved to await such further action as the Congress may take in respect thereof. Nothing in this act shall be construed as the recognition of any liability on the part of the United States for the payment of such tentative awards, nor as authorizing any appropriation or the use of any appropriation or of any funds in the special deposit account created by section 5, or of any other funds, for the payment of any such tentative award or of a claim in respect of which such an award is made.

FUNDS AVAILABLE FOR PAYMENT

SEC. 5. (a) There is hereby created in the Treasury a special deposit account, into which shall be deposited all funds hereinafter specified and from which shall be disbursed all payments authorized by section 3 or 4, including the expenditures authorized under subdivisions (e) and (m) of section 4 and subdivision (e) of this section.

(b) The Secretary of the Treasury is authorized and directed to deposit in the special deposit account—

(1) All sums invested or transferred by the Alien Property Custodian, under the provisions of section 25 of the trading with the enemy act, as amended;

(2) The amounts appropriated under the authority of section 4;

(3) All money (including the proceeds of any property, rights, or benefits which may be sold or otherwise disposed of, upon such terms as he may prescribe) received, whether before or after the enactment of this act, by the United States in respect of claims of the United States against Germany on account of the awards of the Mixed Claims Commission.

(c) The Secretary of the Treasury is authorized and directed, out of the funds in the special deposit account, subject to the provisions of subdivision (d), and in the following order of priority—

(1) To make the payments of expenses of administration authorized by subdivisions (e) and (m) of section 4 of subdivision (e) of this section;

(2) To make so much of each payment (in respect of an award of the Mixed Claims Commission) authorized by subdivision (b) of section 3, as is attributable to an award on account of death or personal injury, together with interest thereon as provided in subdivision (c) of section 3;

(3) To make each payment (in respect of an award of the Mixed Claims Commission) authorized by subdivision (b) of section 3, if the amount thereof is not payable under paragraph (2) of this subdivision and does not exceed \$100,000, together with interest thereon as provided in subdivision (c) of section 3;

(4) To pay the amount of \$100,000 in respect of each payment authorized by subdivision (b) of section 3, if the amount of such authorized payment is in excess of \$100,000 and is not payable in full under paragraph (2) of this subdivision;

(5) To make additional payments (in respect of awards of the Mixed Claims Commission) authorized by subdivision (b) of section 3, in such amounts as will make the aggregate payments under this paragraph and paragraphs (2), (3), and (4) of this subdivision equal to 80 per centum of the aggregate amount of all payments authorized by subdivision (b) of section 3. Payments under this paragraph shall be prorated on the basis of the amount of the respective payments authorized by subdivision (b) of section 3 and remaining unpaid;

(6) To pay (whether or not the payments under paragraphs (1) to (5), inclusive, have been completed) to German nationals, out of the funds available under the provisions of subdivision (d) of this section, amounts determined by the Secretary of the Treasury to be payable in respect of the tentative awards of the Arbitrator, in accordance with the provisions of subdivision (s) of section 4;

(7) To pay to German nationals such amounts as will make the aggregate payments equal to 50 per centum of the amounts awarded under section 4;

(8) To pay accrued interest upon the participating certificates evidencing the amounts invested by the Alien Property Custodian under subsection (a) of section 25 of the trading with the enemy act, as amended;

(9) To pay the accrued interest payable under subdivision (c) of section 3 and subdivision (h) of section 4;

(10) To make such payments as are necessary (A) to repay the amounts invested by the Alien Property Custodian under subsection (a) of section 25 of the trading with the enemy act, as amended, (B) to pay amounts equal to the difference between the aggregate payments (in respect of claims of German nationals) authorized by subdivisions (g) and (h) of section 4, and the amounts previously paid in respect thereof, and (C) to pay amounts equal to the difference between the aggregate payments (in respect of awards of the Mixed Claims Commission) authorized by subdivisions (b) and (c) of section 3, and the amounts previously paid in respect thereof. If funds available are not sufficient to make the total payments authorized by this

paragraph, the amount of payments made from time to time shall be apportioned among the payments authorized under clauses (A), (B), and (C) according to the aggregate amount remaining unpaid under each clause;

(11) To make such payments as are necessary to repay the amount invested by the Alien Property Custodian under subsection (b) of section 25 of the trading with the enemy act, as amended; but the amount payable under this paragraph shall not exceed the aggregate amount allocated to the trusts described in subsection (e) of section 26 of such act;

(12) To pay into the Treasury as miscellaneous receipts the amount of the awards of the Mixed Claims Commission to the United States, on its own behalf, on account of claims of the United States against Germany; and

(13) To pay into the Treasury as miscellaneous receipts any funds remaining in the special deposit account after the payments authorized by paragraphs (1) to (12) have been completed.

(d) 50 per centum of the amounts appropriated under the authority of section 4 shall, notwithstanding the provisions of subdivision (e) of this section, be available at all times for the payment of the awards to German nationals under section 4, including payments in respect of tentative awards, and shall be available only for such payments until such time as 50 per centum of the amounts awarded under section 4 have been paid.

(e) The Secretary of the Treasury is authorized to pay, from funds in the special deposit account, such amounts, not in excess of \$25,000 per annum, as may be necessary for the payment of the expenses in carrying out the provisions of this section, and sections 25 and 26 of the trading with the enemy act, as amended, including personal services at the seat of Government.

(f) The Secretary of the Treasury is authorized to invest and reinvest, from time to time, in bonds, notes, or certificates of indebtedness of the United States any of the funds in the special deposit account, and to deposit to the credit of such account the interest or other earnings thereon.

FINALITY OF DECISIONS

SEC. 6. (a) Notwithstanding the provisions of section 236 of the Revised Statutes, as amended, the decisions of the Secretary of the Treasury in respect of the funds to be paid into the special deposit account and of the payments therefrom, shall be final and conclusive, and shall not be subject to review by any other officer of the United States, except that payment made under authority of subdivision (e) or (m) of section 4 or subdivision (e) of section 5 shall be accounted for and settled without regard to the provisions of this subdivision.

(b) The Secretary of the Treasury, in his annual report to the Congress, shall include a detailed statement of all expenditures made in carrying out the provisions of this act.

EXCESSIVE ATTORNEYS' FEES PROHIBITED

SEC. 7. (a) The arbiter and the commissioner of the Mixed Claims Commission appointed by the United States, respectively, are authorized to fix reasonable fees for services in connection with the proceedings before the arbiter and the Mixed Claims Commission and the application for payment, and the payment of, any amount under section 3 or 4.

(b) Any person accepting any consideration (whether or not under a contract or agreement entered into prior to the enactment of this act) the aggregate value of which is in excess of the amount so fixed, for services in connection with the proceedings before the arbiter or Mixed Claims Commission, or with the application for payment or the payment of any amount under sections 3 or 4, shall, upon conviction thereof, be punished by a fine equal to four times the aggregate value of the consideration accepted by such person therefor.

(c) Section 20 of the trading with the enemy act, as amended, is amended by inserting after the word "attorney" wherever it appears in such section the words "at law or in fact."

INVESTMENT OF FUNDS BY ALIEN PROPERTY CUSTODIAN

SEC. 8. The trading with the enemy act, as amended, is amended by adding thereto the following new section:

"SEC. 25. (a) The Alien Property Custodian is authorized and directed to invest, from time to time, in one or more participating certificates issued by

the Secretary of the Treasury in accordance with the provisions of this section, the amounts the return of which is temporarily postponed, in accordance with the provisions of subsection (m) of section 9 of the trading with the enemy act, as amended.

"(b) The Alien Property Custodian is authorized and directed to invest, in one or more participating certificates issued by the Secretary of the Treasury, out of the unallocated interest fund, as defined in section 28—

"(1) The sum of \$25,000,000. If, after the allocation under section 26 has been made, the amount of the unallocated interest fund allocated to the trusts described in subsection (c) of such section is found to be in excess of \$25,000,000, such excess shall be invested by the Alien Property Custodian in accordance with the provisions of this subsection. If the amount so allocated is found to be less than \$25,000,000 any participating certificate or certificates that have been issued shall be corrected accordingly; and

"(2) The balance of such unallocated interest fund remaining after the investment provided for in paragraph (1), the payment of allocated earnings in accordance with the provisions of subsection (b) of section 26, and the deposits in the Treasury under subsection (d) of section 26, have been made.

"(c) If the amount of such unallocated interest fund, remaining after the investment required by paragraph (1) of subsection (b) of this section has been made, is insufficient to pay the allocated earnings and make the deposits referred to in paragraph (2) of subsection (b) of this section, then the amount necessary to make up the deficiency shall be paid out of the funds in the special deposit account created by section 5 of the settlement of war claims act of 1927, prior to any other payment therefrom other than the payments under paragraph (1) of subsection (c) of such section.

"(d) The Alien Property Custodian is authorized and directed to transfer to the Secretary of the Treasury, for deposit in such special deposit account, all money and the proceeds of all property, including all income, dividends, interest, annuities, and earnings accumulated in respect thereof (1) owned by the German Government or any member of the former ruling family, or (2) no claim to which is filed with the Alien Property Custodian prior to the expiration of two years from the date of the enactment of the settlement of war claims act of 1927, or (3) if any such claim is filed within such period, then if the ownership thereof under any such claim is not established. The amounts so transferred under this subdivision shall be credited upon the final payment due the United States from the German Government on account of the awards of the Mixed Claims Commission.

"(e) The Secretary of the Treasury is authorized and directed to issue to the Alien Property Custodian upon such terms and conditions and under such regulations as the Secretary of the Treasury may prescribe, one or more participating certificates, bearing interest payable annually (as nearly as may be) at the rate of 5 per cent per annum, as evidence of the investment by the Alien Property Custodian under subsection (a) and one or more noninterest bearing participating certificates as evidence of the investment by the Alien Property Custodian under subsection (b). All such certificates shall evidence a participating interest, in accordance with, and subject to the priorities of, the provisions of section 5 of the settlement of war claims act of 1927, in the funds in the special deposit account created by such section, except that—

"(1) The United States shall assume no liability, directly or indirectly, for the payment of any such certificates, or of the interest thereon, except out of funds in such special deposit account available therefor, and all such certificates shall so state on their face; and

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

RETURN TO GERMAN NATIONALS OF PROPERTY HELD BY ALIEN PROPERTY CUSTODIAN

SEC. 9. Subsection (b) of section 9 of the trading with the enemy act, as amended, is amended by striking out the punctuation at the end of paragraph (11) and inserting in lieu thereof a semicolon and the word "or" and inserting after paragraph (11) the following paragraphs:

"(12) A partnership, association, or other unincorporated body of individuals, or a corporation, and was entirely owned at such time by subjects or citizens

of nations, States, or free cities other than Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder, and has filed the written consent provided for in subsection (m); or

"(13) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Austria, Hungary, or Austria-Hungary, or a corporation organized or incorporated within any country other than Austria, Hungary, or Austria-Hungary, and that more than 50 per centum of the interest or voting power in any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Austria, Hungary, or Austria-Hungary, and that the written consent provided for in subsection (m) has been filed; or

"(14) An individual who at such time was a citizen or subject of Germany or who, at the time of the return of any money or other property, is a citizen or subject of Germany or is not a citizen or subject of any nation, State, or free city, and that the written consent provided for in subsection (m) has been filed; or

"(15) The Austro-Hungarian Bank, except that the money or other property thereof shall be returned only to the liquidators thereof, and only if such liquidators give a bond, in a penal sum and with sureties satisfactory to the President or to the court, as the case may be, conditioned that they will redeliver to the Alien Property Custodian all such money or other property distributable to the Government of Austria or Hungary; or

"(16) An individual who at the time of the return of such money or other property is not a citizen or subject of Austria or Hungary, and that the written consent provided for in subsection (m) has been filed, and that no suit or proceeding against the United States or any agency thereof is pending in respect of such return, and that such individual has filed a written waiver renouncing on behalf of himself, his heirs, successors, and assigns any claim based upon the fact that at the time of such return he was in fact entitled to such return under any other provision of this act:--"

SEC. 10. (a) Subsection (d) of section 9 of the trading with the enemy act, as amended, is amended to read as follows:

"(d) Whenever a person, deceased, would have been entitled, if living, to the return of his money or other property hereunder, then his legal representative may proceed for the return of such money or other property as provided in subsection (a) hereof, and such money or other property may be returned to such legal representative without requiring the appointment of an administrator, or an ancillary administrator, by a court in the United States, or to any such ancillary administrator for distribution directly to the persons entitled thereto: *Provided, however,* That the President or the court, as the case may be, before granting such relief shall impose such conditions by way of security or otherwise, as the President or the court, respectively, shall deem sufficient to insure that such legal representative, administrator, or ancillary administrator will redeliver to the Alien Property Custodian such portion of the money or other property so received by him as shall be distributable to any person not eligible as a claimant under subsection (a), (b), or (u) hereof."

(b) Subsection (e) of section 9 of the trading with the enemy act, as amended, is amended by striking out the period at the end thereof and inserting a semicolon and the following: "nor shall a debt be allowed under this section unless notice of the claim has been filed, or application therefor has been made, prior to the date of the enactment of the settlement of war claims act of 1927."

(c) Subsection (g) of section 9 of the trading with the enemy act is amended to read as follows:

"(g) The legal representative of a person, deceased, whose money or other property has been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, may (if not entitled to proceed under subsection (d) of this section) proceed under subsection (a) for the recovery of any interest, right, or title in any such money or other property which has, by reason of the death of such person, become the interest, right, or title of a citizen of the United States, unless such citizenship was acquired through naturalization proceedings in which the declaration of intention was filed after November 11, 1918 or has become, prior to the enactment of the settle-

ment of war claims act of 1927, the interest, right, or title of a person eligible as a claimant under subsection (a), (b), or (n) of this section. Such legal representative shall give a bond, in a penal sum and with sureties satisfactory to the President or the court, as the case may be, condition that he will deliver to the Alien Property Custodian all such money or other property not distributed to such citizen or person so eligible, or, if deceased, to his heirs or legal representatives."

SEC. 11. Subsections (j) and (k) of section 9 of the trading with the enemy act, as amended, are amended so as to comprise three subsections, to read as follows:

"(j) The Alien Property Custodian is authorized and directed to return to the person entitled thereto, whether or not an enemy or ally of enemy and regardless of the value, any patent, trade-mark, print, label, copyright, or right therein or claim thereto, which was conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and which has not been sold, licensed, or otherwise disposed of under the provisions of this act, and to return any such patent, trade-mark, print, label, copyright, or right therein or claim thereto, which has been licensed, except that any patent, trade-mark, print, label, copyright, or right therein or claim thereto, which is returned by the Alien Property Custodian and which has been licensed, or in respect of which any contract has been entered into, or which is subject to any lien or encumbrance, shall be returned subject to the license, contract, lien, or encumbrance.

"(k) Except as provided in section 27 paragraphs (12), (13), (14), and (16) of subsection (b) of this section shall apply to the proceeds received from the sale, license, or other disposition of any patent, trade-mark, print, label, copyright, or right therein or claim thereto, conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him.

"(l) This section shall apply to royalties paid to the Alien Property Custodian, in accordance with a judgment or decree in a suit brought under subsection (f) of section 10; but shall not apply to any other money paid to the Alien Property Custodian under section 10."

SEC. 12. Section 9 of the trading with the enemy act, as amended, is amended by adding at the end thereof the following new subsections:

"(m) No money or other property shall be returned under paragraph (12), (13), (14), or (16) of subsection (b) or under subsection (n) unless the person entitled thereto files a written consent to a postponement of the return of an amount equal to 20 per centum of the aggregate value of such money or other property, as determined by the Alien Property Custodian, and the investment of such amount in accordance with the provisions of section 25. Such amount shall be deducted from the money to be returned to such person, so far as possible, and the balance shall be deducted from the proceeds of the sale (in accordance with the provisions of section 12) of so much of the property as may be necessary, unless such person pays the balance to the Alien Property Custodian, except that no property shall be so sold prior to the expiration of six years from the date of the enactment of the settlement of war claims act of 1927 without the consent of the person entitled thereto.

"(n) In the case of property consisting of stock or other interest in any corporation, association, company, or trust, or of bonded or other indebtedness thereof, evidenced by certificates of stock or by bonds or by other certificates of interest therein or indebtedness thereof, or consisting of dividends or interest or other accruals thereon, where the right, title, and interest in the property (but not the actual certificate or bond or other certificate of interest or indebtedness) was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him, if the President determines that the owner thereof or of any interest therein has acquired such ownership by assignment, transfer, or sale of such certificate or bond or other certificate of interest or indebtedness (it being the intent of this subsection that such assignment, transfer, or sale shall not be deemed invalid hereunder by reason of such conveyance, transfer, assignment, delivery, or payment to the Alien Property Custodian or seizure by him), and that the written consent provided in subsection (m) has been filed, then the President may make in respect of such property an order of the same character, upon the same conditions, and with the same effect as in cases provided for in subsection (b), including the benefits of subsection (c).

"(o) The provisions of paragraph (12), (13), or (14) of subsection (b) or of subsection (m) or (n) of this section, and (except to the extent therein

provided) the provisions of paragraph (16) of subsection (b), shall not be construed as diminishing or extinguishing any right under any other provision of this act in force immediately prior to the enactment of the settlement of war claims act of 1927."

SEC. 13. The trading with the enemy act, as amended, is amended by adding thereto the following new sections:

"SEC. 26. (a) In the case of money (including the proceeds of property converted into money) deposited in the Treasury of the United States under section 12, the Alien Property Custodian shall allocate among the various trusts (1) the earnings accruing on such money (including the proceeds of any bonds or certificates of indebtedness in which such earnings are invested, and the earnings thereon) prior to March 4, 1923, and (2) the earnings accruing, on or after March 4, 1923, or the date on which the money was so deposited (whichever date is earlier) and prior to the date on which such allocation is made, on the earnings computed under clause (1). Such allocation shall be made under regulations prescribed by the Secretary of the Treasury and shall be based upon the average rate of earnings (determined by the Secretary of the Treasury) on the total amounts deposited under section 12.

"(b) In the case of any person entitled, under subsection (a) of section 9 or paragraphs (1) to (8), both inclusive, or paragraph (11) or (15), of subsection (b) of section 9, to the return of money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him, the Alien Property Custodian, when the allocation has been made, is authorized and directed to pay to such person, notwithstanding any receipt or release given by him, the amount allocated to his trust.

"(c) In the case of persons entitled, under paragraph (12), (13), (14), or (16) of subsection (b) of section 9, to such return, and in the case of persons who would be entitled to such return thereunder if all such money or property had not been returned under paragraph (9) or (10) of such subsection, and in the case of persons entitled to such return under subsection (n) of section 9, an amount equal to the aggregate amount allocated to their trusts shall be credited against the sum of \$25,000,000 invested in participating certificates under paragraph (1) of subsection (b) of section 25. If the aggregate amount so allocated is in excess of \$25,000,000, an amount equal to the excess shall be invested in the same manner. Upon the repayment of any of the amounts so invested, under the provisions of section 5 of the settlement of war claims act of 1927, the amount so repaid shall be distributed pro rata among such persons, notwithstanding any receipts or releases given by them.

"(d) In the case of any other enemy or ally of enemy entitled to such return, the Alien Property Custodian shall deposit the amount allocated to his trust in the Treasury in the name of such person until otherwise directed by Congress.

"(e) The payment provided for in subsection (a), the investment provided for in subsection (c), and the deposit provided for in subsection (d), shall be made out of the unallocated interest fund.

"SEC. 27. The Alien Property Custodian is authorized and directed to return to the United States any consideration paid to him by the United States under any license, assignment, or sale by the Alien Property Custodian to the United States of any patent (or any right therein or claim thereto, and including an application therefor and any patent issued pursuant to any such application).

"SEC. 28. As used in this act the term 'unallocated interest fund' means the sum of (1) the earnings accruing prior to March 4, 1923, on money (including the proceeds of property converted into money) deposited in the Treasury of the United States under section 12 (including the proceeds of any bonds or certificates of indebtedness in which such earnings are invested, and the earnings thereon), plus (2) the earnings accruing on or after March 4, 1923, or the date on which the money was so deposited (whichever date is earlier) and prior to the date on which the allocation provided for in section 26 is made, on the earnings computed under clause (1) of this section."

DEFINITIONS

SEC. 14. As used in this act—

(a) The term "person" means an individual, partnership, association, or corporation.

(b) The term "German national" means—

(1) An individual who, on April 6, 1917, was a citizen or subject of Germany, or who, on the date of the enactment of this act, is a citizen or subject of Germany.

(2) A partnership, association, or corporation, which on April 6, 1917, was organized or created under the law of Germany but excluding any such partnership, association, or corporation, more than 50 per centum of the interest or voting power in which was on April 6, 1917, or on the date of the enactment of this act, vested (directly or indirectly) in citizens or subjects of Austria, Hungary, or Austria-Hungary.

(3) An individual (other than a citizen or subject of Austria, Hungary, or Austria-Hungary) whose claim is based upon an interest on April 6, 1917, in a partnership, association, or corporation excluded under paragraph (2).

(4) The Government of Germany.

(c) The term "Austrian or Hungarian national" means—

(1) An individual (other than a German national) who, on April 6, 1917, was a citizen or subject of Austria, Hungary, or Austria-Hungary, or who, on the date of the enactment of this act, is a citizen or subject of Austria or Hungary;

(2) A partnership, association, or corporation (other than a German national) which, on April 6, 1917, was organized or created under the law of Austria, Hungary, or Austria-Hungary, if more than 50 per centum of the interest or voting power therein was, on April 6, 1917, or on the date of the enactment of this act, vested (directly or indirectly) in citizens or subjects of Austria, Hungary, or Austria-Hungary;

(3) The Government of Austria, Hungary, or Austria-Hungary.

(d) The term "United States" when used in a geographical sense includes the Territories and possessions of the United States and the District of Columbia.

The CHAIRMAN. The committee will come to order. I have asked the Secretary of State to appear before the committee, thinking perhaps there would be some questions asked by members of the committee, some perhaps of a confidential nature, and others that he is perfectly willing to be given to the world.

STATEMENT OF HON. FRANK B. KELLOGG, SECRETARY OF STATE

The CHAIRMAN. I will ask the Secretary if he appeared before the House committee?

Secretary KELLOGG. No; I did not appear before the House committee. Chairman Green came down and talked with me about the history of the Dawes plan, the payments to be made under it, and the Paris agreement, whereby we were to receive our Army costs and 2 $\frac{1}{4}$ per cent for our other claims. Senator King offered a resolution last session of Congress, I think it was, Senator?

Senator KING. Yes.

Secretary KELLOGG. Asking for all the correspondence bearing on the subject of the Berlin treaty, the Dawes plan, and the Paris agreement, and I immediately went to work to get the consent of the British and German Governments to publish it. I did not get the consent of the German Government until, I think, after the meeting of the House Ways and Means Committee. But I did get the consent of the British Government, and furnished the correspondence between the British Government and the United States Government to the House committee. I also outlined orally to Chairman Green the substance of the correspondence with the German Government pertaining to the alien property held by the Alien Property Custodian.

Now, I do not know any information that I can give the committee other than appears in all the documents and correspondence which I asked the President to send the Senate in response to

Senator KING's resolution. Nevertheless, if there is anything you wish especially to ask me, or if you wish me to state the history of those negotiations, I am perfectly willing to do it.

The CHAIRMAN. I think perhaps it would be just as well, Mr. Secretary, for you to state them briefly. And then after that statement why it may suggest some questions that some of the members of the committee may wish to ask.

Secretary KELLOGG. Well, of course, they are really all in these documents that I had the President send to the Senate. But I am willing to go over the matter and give you the general history of it as bearing on the payment of the American claims and the return of the German property.

The CHAIRMAN. Would you at this time care to give the committee your opinion of the House bill as it is, whether it is satisfactory?

Secretary KELLOGG. Oh, no; I do not think I would care to give that opinion. I have never examined it closely. I understand that the bill in substance enunciates in a general statement the principle of returning all the German alien property to the owners. Temporarily—and I may not be able to express it perfectly—temporarily they propose to take 50 per cent of the value of the ships, radio stations, and patents amounting to \$50,000,000, and apply them on the payment of the American claims against Germany growing out of the damages accruing to our citizens during the war, to take 20 per cent of the alien property and apply that to the payment of the American claims, and to take about \$25,000,000 of interest that accrued on the proceeds of German property held by the Alien Property Custodian, or earnings of that property prior to the time the Congress provided for the payment of the income of that property to the claimants to the property. Now that is about as far as I have gone in the examination of the bill.

Leading up to the agreement whereby we were to receive our Army costs and $2\frac{1}{4}$ per cent, the committee is probably aware of the fact that the London conference was called for the purpose of putting in force the Dawes plan. The conference ended by signature of the protocol putting the Dawes plan into effect on the 1st of September, 1924, while I was in England. I attended that conference on behalf of the United States, although we did not sign the agreement putting it into force. Under the Dawes plan, as the committee are aware, Germany was to make what you might call global payments, that is, payments in lump sums into the Reichsbank, which was created under the Dawes plan, or to be created by Germany, in discharge of all claims of all the allied and associated powers, the United States being the associated power. Germany was to pay 1,000,000,000 gold marks in 1924-25. The next year 1,220,000,000 gold marks. The next year 1,200,000,000 gold marks. The next year 1,750,000,000 gold marks. And thereafter 2,500,000,000 gold marks, with certain minor qualifications for increase or decrease, which I do not think bear on this question.

Senator KING. Thereafter and for how long, Mr. Secretary?

Secretary KELLOGG. There is no limit of time. The Dawes plan did not pretend to fix the claims of the allied and associated powers, nor limit the amount that Germany was to pay.

The plan included the following provisions: First, the statement of these sums; and, second, a definition of their inclusive nature as follows:

Before passing from this part of our report, we desire to make it quite clear that the sums denoted above in our examination of the successive years, comprise all amounts for which Germany may be liable to the allied and associated powers for the costs arising out of the war, including reparation, restitution, all costs of all armies of occupation, clearing-house operations to the extent of those balances which the Reparation Commission decide must legitimately remain a definitive charge on the German Government, commissions of control and supervision, etc. Wherever in any part of this report or its annexes we refer to treaty payments, reparation, amounts payable to the Allies, etc., we use these terms to include all charges payable by Germany to the allied and associated powers for these war costs. They also include special payments such as those due under articles 58, 124, and 125 of the treaty of Versailles.

It is not necessary to go into that last treaty. So you see that the agreement when accepted by the allied powers—we did not sign it, of course—provides that these payments were to be the total payments made by Germany, and the allied and associated powers were compelled to agree between themselves as to the division of these payments between the various governments.

Senator REED of Pennsylvania. We did sign that agreement.

Secretary KELLOGG. We did sign that agreement.

Senator KING. By what authority?

Senator JONES of New Mexico. And, Mr. Secretary, by what authority did the Dawes Commission undertake to include the matters pertaining to the United States?

Secretary KELLOGG. Oh, they simply recommended it in this. Of course, we gave them no authority. There was no one on the Dawes committee representing the Government of the United States. And, of course, I did not sign the protocol putting in effect the Dawes plan at all.

Senator JONES of New Mexico. Well, did not the German Government insist, or rather claim, that someone on behalf of the United States requested the Dawes Commission to include the United States in that plan?

Secretary KELLOGG. Well, I never heard of it.

Senator JONES of New Mexico. Well, it seems to me that I got that impression from a letter of the German Government directed to you and published in this document 173.

The CHAIRMAN. 173 or 182?

Senator JONES of New Mexico. 173.

Secretary KELLOGG. I would have to look that up. I do not recollect it. I do recollect this, of course—and I may want to correct the language when I look at the documents, because I have not got everything before me—during the session of the London conference the French representatives offered a resolution for a meeting of the finance ministers of the allied governments to agree on a division of the payments to be made by Germany between them. That was before the Dawes plan had been accepted by the London conference. As our Army costs had not been paid and the London conference was not to pass upon the question of the division of payments I was instructed by Mr. Hughes to file a statement with the secretary of the conference that the United States was entitled to participate

in any conference for the division of these payments, and was entitled to have its Army costs paid as a prior charge on those payments, and was entitled to participate in the payments after the priorities had been paid for the purpose of paying the American claims. I filed that statement with the London conference. And thereafter we did participate in the division.

The CHAIRMAN. Did you take any part in the London conference?

Secretary KELLOGG. Oh, yes; I was present all the time. Of course the agreement was made between the allied powers. We did not join in the agreement. I was present simply as the representative of the United States.

Senator EDGE. Well, they did agree, did they not, Mr. Secretary, to the claim as outlined by you in the Hughes letter, I mean they agreed to allow us the priority, did they not?

Secretary KELLOGG. Yes. I will come to that in a moment.

Senator KING. One moment, Mr. Secretary, if I may interrupt you?

Secretary KELLOGG. Yes.

Senator KING. The payments for the Army of Occupation had been made by Germany to the allied nations and the \$284,000,000 which are due the United States has been paid, and Mr. Hughes or you did not insist upon getting that \$284,000,000, did you?

Secretary KELLOGG. Oh, yes; we insisted on it, of course.

Senator KING. And were remitted that mere amount provided for by the agreement which you signed?

Secretary KELLOGG. No. I will explain that. Prior to the time I became ambassador—and I can not tell you without having the agreement here, and I have not got it, but I can send it to you—this Government sent Mr. Eliot Wadsworth to Paris to negotiate for the payment of the American claims for the costs of the Army of Occupation. I am unable to say to what extent the allied powers had received their pay. I believe practically in full.

Senator HARRISON. Before Mr. Wadsworth went to Paris?

Secretary KELLOGG. Yes, I think before he entered into an agreement. I shall have to look that up for you. Germany paid certain moneys over to the allied powers, and they assumed to at least, and I have no doubt did, take out their army costs.

Senator BAYARD. Did they take out their army costs, Mr. Secretary?

Secretary KELLOGG. Their arms costs but not ours.

Senator BAYARD. In toto, all of it?

Secretary KELLOGG. I think they did take it out under the treaty of Versailles which provided for it. So Mr. Wadsworth went over to Paris and negotiated an agreement for the payment of our Army costs in annual installments. I have not got the agreement here and I can not give you the exact provisions of it, but if you desire it I will send it up as one of the documents you are entitled to.

Senator WATSON. Was that before you went to England?

Secretary KELLOGG. Yes. That was in May, 1923. That agreement was, as I recollect, ratified by all the governments except France, which refused to ratify it. And no payments were made under it at all.

Senator JONES of New Mexico. Do you know why France refused to ratify that agreement?

Secretary KELLOGG. I do not. It was not during my term of office, and I have no knowledge on the subject. I might be able to look it up, but I could not tell you now.

Senator HARRISON. Well, in that connection do you not think it well, Mr. Secretary, that the number of years of carrying out the agreement that Mr. Wadsworth entered into in which this money was to come to the United States for the army of occupation costs ought to be put into the record?

Secretary KELLOGG. The number of years?

Senator HARRISON. Yes.

The CHAIRMAN. Well I thought the Secretary was coming to that.

Senator HARRISON. Well, he said he did not have that but he could furnish it, but I think it ought to go in the record.

Secretary KELLOGG. No, I say it never came into effect because France refused to ratify it. I do not know why.

Senator HARRISON. You can give us approximately the number of years that were agreed upon, can you not?

Secretary KELLOGG. Do you mean how many years it would take to pay up our Army costs?

The CHAIRMAN. With interest.

Senator KING. The interest and all was nearly \$284,000,000, as I remember. It is some time since I have read it.

Secretary KELLOGG. Our Army costs amounted to about \$255,000,000, less certain credits which the German Government was entitled to, which reduced it to somewhere around \$235,000,000 or \$240,000,000. Well, roughly speaking, that agreement provided that our Army costs of \$255,000,000, on which there have been some small credits, which I have just mentioned, would be divided into 12 annual installments, and should be during the first 4 of the 12 years a first charge on cash payments received from Germany or for Germany's account after the expenses of the Reparation Commission and the current expenses of allied armies of occupation have been satisfied, but during the last 8 years to be an absolute prior charge on all cash payments except for the costs of the Reparation Commission. That was the Wadsworth agreement in substance.

Senator HARRISON. In other words, we were giving them 12 years in which to pay it, although Germany had paid it into the treasuries of the allied countries?

Secretary KELLOGG. Well, Germany had paid lump sums to the allied powers, and under the Versailles treaty they took their army costs as the first charge. Now, that agreement, as I say—I am not very familiar with the history of it—never went into effect, and we got no Army costs paid under it.

After the Dawes plan had been put in force, of course it was evident that we either had to get out money as a prior charge out of these lump payments by Germany or a percentage of the current payments by Germany. And I was directed to sound out the British Government as to its attitude, which had not up to that time appeared to be very favorable to our getting anything out of the German payments. So under the instructions of Mr. Hughes I took the matter up with the British Government, as appears in the cor-

respondence here. It is all in this Senate Document No. 173. The British Government said of course we were entitled to the payment of our Army costs, but we were not entitled to anything to pay our claims against Germany because we had not ratified the treaty of Versailles.

As you will see by the correspondence I was directed by Mr. Hughes and did take the position that the Berlin treaty adopting certain provisions of the Versailles treaty for the benefit of the United States included the provision that the United States was entitled to the same claims against Germany as the allied powers. The United States did not insist on the same claims; it waived the pensions to soldiers, etc.

Senator JONES of New Mexico. Well, when did our Government waive those payments?

Secretary KELLOGG. I can not tell you exactly. I think in connection with the Mixed Claims Convention and the exchange of notes. It is all in this statement.

Senator JONES of New Mexico. There is nothing in the Berlin treaty which waives any of it, is there?

Secretary KELLOGG. No. I think there is in the exchange of notes made in connection with the claims convention. If they are not published in this statement we will furnish them to you. Under the Berlin treaty, however, we were entitled to the payment of all damages to all Americans growing out of the war, to their persons and to their property. The correspondence in relation to the pension and other claims will be found on page 31 of this document.

Senator JONES of New Mexico. Well, as long as we are going to refer to that we might just as well clear it up. There is nothing in the Berlin treaty or any act of Congress, is there, by which the United States waived any claims provided in the Versailles treaty?

Secretary KELLOGG. Well, I do not know whether there is or not. There is nothing in the Berlin treaty. The correspondence on that subject you will find here in this document. Of course, we did not waive any claims for damages to our nationals growing out of the war.

Senator JONES of New Mexico. The matter of claims for pensions and injury to our soldiers and that sort of thing, which were provided for in the Versailles treaty, was referred to a while ago. That was all carried into the Berlin treaty. Now I would like to know by what authority the State Department or any department of the Government waived any of those claims against Germany?

Secretary KELLOGG. Well, my recollection is that the principal item waived was that this Government would not make any claim for soldiers' pensions, etc., but I would have to look that up.

Senator JONES of New Mexico. Now that was provided for in the Versailles treaty.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. And carried into the Berlin treaty.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. Now, by what authority did the State Department or any other department of this Government waive any of those claims?

Secretary KELLOGG. Well, all I can tell you about it is the note sent on August 10, 1922, by Mr. Houghton to the German Government:

In accordance with the instructions that I have received from my Government, I am authorized by the President to state that he has no intention of pressing against Germany or of presenting to the commission established under the claims agreement any claims not covered by the treaty of August 25, 1921, or any claims falling within paragraphs 5 to 7, inclusive, of the annex following article 244 of the treaty of Versailles.

Senator McLEAN. What is the date of that letter?

Secretary KELLOGG. August 10, 1922. Paragraphs 5 to 7 of annex 1, following article 244 of the Versailles treaty read as follows:

(5) As damage caused to the peoples of the allied and associated powers, all pensions and compensation in the nature of pensions to naval and military victims of war (including members of the air force), whether mutilated, wounded, sick, or invalided, and to the dependents of such victims, the amount due to the allied and associated governments being calculated for each of them as being the capitalized cost of such pensions and compensation at the date of the coming into force of the present treaty on the basis of the scales in force in France at such date.

(6) The cost of assistance by the governments of the allied and associated powers to prisoners of war and to their families and dependents.

(7) Allowances by the governments of the allied and associated powers to the families and dependents of mobilized persons or persons serving with the forces, the amount due to them for each calendar year in which hostilities occurred being calculated for each government on the basis of the average scale for such payments in force in France during that year.

Those were the claims. Now, I am entirely unable to tell whether the allied powers got anything under those claims or not.

Senator JONES of New Mexico. I am not specially interested in whether they have or not, but I am interested in knowing by what authority any one representing the United States Government undertook to waive any of those claims?

Secretary KELLOGG. Well, of course, the President has authority to settle claims of this country against any foreign country, unless prohibited by Congress. However, there is no use of me discussing that any more. I am simply telling what occurred.

Senator JONES of New Mexico. Well, I think you are just the one to shed light upon this subject, if any one can. You are the head of the State Department, the one that deals with foreign nations, and here is a treaty right which the Senate put into a solemn treaty between the United States and Germany, and I would like to know whether it is claimed by any one in the State Department that that department or even the President had authority to waive anything that was included in that treaty?

Secretary KELLOGG. Well, a German Claims Commission was created by the convention or agreement between Germany and the United States, and very naturally the President had the power to decide what claims should be presented before that commission on behalf of the Government of the United States, or should not be. That is a power the President always has in enforcing claims against foreign countries.

Senator JONES of New Mexico. I am willing to admit that I am not familiar with the practice of nations in dealing with each other in respect to such matters as we have before us now, and it may appear that I am asking questions which are not proper, but in order

to satisfy my own mind I would like to know by what authority that agreement was entered into which created the Mixed Claims Commission and defined its powers and limitations.

Secretary KELLOGG. That power rests in the President in every case. The President has authority to settle claims and adjust claims between this Government and foreign governments, and to enter into agreements for arbitration of such claims, and on behalf of American citizens who seek the good offices of the United States.

Senator JONES of New Mexico. Well now, does he have that power in the absence of some authority from Congress?

Secretary KELLOGG. Certainly.

Senator EDGE. Is it not true, Mr. Secretary, that many grants in the Versailles treaty have since been greatly altered and reduced by these various conferences?

Secretary KELLOGG. Oh, yes.

Senator EDGE. That is the whole idea of the Dawes plan.

Secretary KELLOGG. The Dawes payments would never pay all the claims that the Versailles treaty authorized the allied governments to present.

The CHAIRMAN. That the German Government itself never could have paid. That is recognized.

Secretary KELLOGG. When the Dawes agreement was made everybody knows that the German Government was practically a bankrupt. Its currency was inflated to such a degree that it could not pay anything.

Senator JONES of New Mexico. Now, I will state very frankly, Mr. Secretary, that what I am after here is information.

Secretary KELLOGG. Oh, certainly, I understand.

Senator WADSWORTH. Mr. Secretary, may I say that I have been reminded that the treaty of Versailles contains a provision or provisions for the setting up of mixed tribunals to go into the matter of claims, the settlement of claims of all kinds and character, as I understand it. And that provision of the treaty of Versailles I think is also contained in the treaty of Berlin which we made with Germany, and based upon that provision in the treaty of Berlin, which was inherited from the treaty of Versailles, the President arranged for this mixed tribunal, the German Claims Commission, and settled the claims.

Senator KING. And yet after assuming that there was a provision there for the setting up of a Mixed Claims Commission, that would not authorize the President of the United States to remit claims which the Government of the United States had or which individuals had, and preclude the Committee from considering them. That would be an act of usurpation.

Senator WADSWORTH. I do not agree with that at all.

Secretary KELLOGG. No; it has always been the practice of the President in this country to present claims and adjust them with the foreign countries.

Senator WADSWORTH. And he was authorized to do that under the treaty.

Senator JONES of New Mexico. Is that, Mr. Secretary, really correct, unless the Congress or the Senate by some treaty has conferred such power upon the President?

Secretary KELLOGG. Yes, sir.

Senator JONES of New Mexico. Well, now, I would like to have some illustration of that sort of thing and find out, if we can, by what body or tribunal such action has been ratified or approved by the Government of the United States.

Secretary KELLOGG. Well, I am speaking from recollection, and subject to correction, because I did not know that you were going into this subject at all.

Senator JONES of New Mexico. Well I did not either.

Secretary KELLOGG. The President of the United States settled with China for the Boxer indemnities and they were paid under that agreement for a good many years.

Senator JONES of New Mexico. Well, was not that Boxer indemnity provision ratified by the Congress or the Senate in some treaty?

Secretary KELLOGG. I think not. I do not think it was ever ratified by anyone. The President made the agreement himself. When American citizens are injured abroad and we claim that some government is liable by reason of the fact that they failed to grant proper protection, why, the President always has authority to settle those claims. Always has authority. Even though it is provided by treaty of the United States that such and such a country will protect Americans and will indemnify them for damages, etc., the President is the one that always has the authority to settle those claims.

Senator JONES of New Mexico. Then according to your interpretation the President of the United States would have been authorized, if he had seen fit to do so, to waive all claims against Germany under the treaty of Berlin?

Secretary KELLOGG. Well, I would not want to say that, Senator.

Senator JONES of New Mexico. Well, if he had not a right to waive all, why has he the authority to waive any?

Secretary KELLOGG. There may be some claims that were affected by acts of Congress. I would not want to make a sweeping statement until I have looked it up. If you wish me to I will examine the whole subject. I can not give you that now. I was not aware that you were going into these questions. You have all the documents here.

Article 3 of the Paris agreement provides that—

Out of the amount received from Germany on account of the Dawes annuities, there shall be paid to the United States of America the following sums in reimbursement of the costs of the United States Army of Occupation and for the purpose of satisfying the awards of the Mixed Claims Commission established in pursuance of the agreement between the United States and Germany of August 10, 1922.

1. Fifty-five million gold marks per annum beginning September 1, 1926, and continuing until the principal sums outstanding on account of the costs of the United States Army of Occupation, as already reported to the Reparation Commission, shall be extinguished. These annual payments constitute a first charge on cash made available for transfer by the transfer committee out of the Dawes annuities, after the provision of the sums necessary for the service of the 800,000,000 gold mark German-external loan, 1924, and for the costs of the Reparation Commission, the organizations established pursuant to the Dawes plan, the Interallied Rhineland High Commission, the Military Control Commissions, and the payment to the Danube Commission provided for in article 9 below.

Then it provides that if in any one year the total of 55,000,000 gold marks are not paid they shall bear interest at 4½ per cent.

Senator EDGE. Was the first payment made under that on September 1, 1926? Is that the date that the first payment should be made?

Secretary KELLOGG. The first year commenced September 1, 1926.

Undersecretary WINSTON. We are getting it monthly from the 1st of September.

Secretary KELLOGG. Well, the Undersecretary of the Treasury can give you that. I have no records of payments in my office at all.

It also provides:

2. Two and one-quarter per cent of all receipts from Germany on account of the Dawes annuities available for distribution as reparations, provided that annuity resulting from this percentage shall not in any year exceed the sum of 45,000,000 gold marks.

That was the Paris agreement providing for payments to the United States.

Senator JONES of New Mexico. Now, Mr. Secretary, I assume it is your idea that the authority for entering into the Paris agreement was the same as you have expressed as the authority for entering into the Mixed Claims Commission agreement with Germany, the general authority of the President of the United States. Is that true?

Secretary KELLOGG. Yes. The Paris agreement did not pretend to limit in any way the amount of the American claims. It did not provide for the release of Germany from any treaty obligation or other obligation. It simply provided that out of these sums there should be paid to the United States so much for Army costs and so much for the claims allowed by the Mixed Claims Commission.

Senator JONES of New Mexico. Now you read from the Dawes report a while ago a statement to the effect that that was an all-exclusive agreement and included reparations to be made to the United States as well as the allied powers.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. Was there not a second commission or a second report made by some commission? I have seen some reference to that. I would like to know what that was.

Secretary KELLOGG. I never have heard of any other commission than the Dawes Commission.

Undersecretary WINSTON. It might be the conference that fixed the amount of the allied reparations. That was prior to the Dawes.

Secretary KELLOGG. Oh, there was an agreement known as the Spa agreement between the allied governments after the Versailles treaty was made, whereby they fixed the percentages to each country. The United States did not attend that.

Senator JONES of New Mexico. That is not the one that I have reference to, but I have seen a reference from two or three different sources to a report subsequent to the Dawes Commission report. I think it was to this effect, that in estimating the ability of Germany to pay that no reference was made or thought taken of the property of the German citizens which were not in Germany, and that they estimated the amount of such property to be about sixteen and one-tenth billion marks. Do you know anything about such a report as that?

Secretary KELLOGG. No, I do not.

Undersecretary WINSTON. Mr. Kellogg, there were two committees appointed, the Dawes Committee that gave this general report, and

another committee going into balances and assets of Germany outside of Germany.

Secretary KELLOGG. Yes, there was some other committee. I don't know anything about their report. There was a committee appointed to look into capital exported from Germany, etc., but I can not give you the result of their conclusion.

Senator WATSON. Well, were we represented on that committee?

Secretary KELLOGG. No, we never were officially represented on the Dawes committee or on the other committee.

Senator JONES of New Mexico. Well, have you in your office or can you get for the committee the statement or whatever it was?

Secretary KELLOGG. Well, it may be attached to this document. I could not say. I never looked into that part of it. I presume we have it. I can send it up to you.

Senator JONES of New Mexico. Well, I am advised that that committee or commission, whatever it was, estimated that there were German assets of citizens of Germany outside of Germany to the extent of sixteen and one-tenth billion of marks.

Secretary KELLOGG. They did make some estimate.

Senator JONES of New Mexico. And the statement was made that that was not taken into consideration by the Dawes commission in fixing the ability of Germany to pay.

Secretary KELLOGG. Do you mean German citizens?

Senator JONES of New Mexico. Yes.

Secretary KELLOGG. I will have to send you up the report. I can not discuss it because I am not familiar with it.

Senator JONES of New Mexico. Well, I wish you would.

Secretary KELLOGG. Yes.

The CHAIRMAN. If you are going to send that up I would like to have it follow at this point in the record, so we will have the whole subject matter together.

Senator JONES of New Mexico. Yes.

(The report mentioned appears at p. —.)

Senator REED of Pennsylvania. Mr. Secretary, of course what we are primarily interested in to-day is this act that is before the committee.

The CHAIRMAN. Yes.

Senator REED of Pennsylvania. And its possible effect on the relations of this Government toward the reparations payments and our share in them. Will you not try before the hearing ends to get to that point?

Senator JONES of New Mexico. I think the Secretary is proceeding in a very orderly way and that we want to get from him all that he is starting out to tell here.

Secretary KELLOGG. Well, I have given you the history of the adoption of the Dawes plan and the agreement made in Paris. The correspondence instructing me to make this agreement you will find in the documents which I have sent up to the Senate.

Senator JONES of New Mexico. Now you have just made the statement that that Paris agreement contained a provision that it did not take away from the United States any other sources for obtaining reparations and that sort of thing.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. Now what was specifically in mind at that time in inserting that sort of a provision into the Paris agreement?

Secretary KELLOGG. Well, here were certain payments to be made by Germany. I was directed by the State Department to see if the other governments would agree that the United States should have a part of those payments, and the British Government objected, as I have said, to our receiving anything on our claims. You will see by the correspondence—there is no use of me trying to read it all, it is all in this document—that she took two grounds. First, that because we did not sign the Versailles treaty we were not entitled to any damages to our citizens or to this Government growing out of the war. I took the position to the contrary. I do not think there was anything in their position myself: never did. Second, that we had a large amount of alien property taken by the Alien Property Custodian under the authority of Congress, including ships, as I said, and that we ought to apply those properties on the payment of our claims for damages to the American citizens and the Government claims. I replied, as you will see, in substance, under the direction of the Secretary of State, that the alien property taken over by this Government was subject entirely to the control of Congress, as provided for by the act of Congress taking over the alien property, and to be disposed of by Congress, and that on that subject I had no authority and could not negotiate; that Congress must be left free to exercise its own judgment, as it was the only power to decide what was to become of that property. And I declined to concede their position.

Those provisions of the Versailles treaty which were adopted by us under the Berlin treaty, did provide, in substance, that if alien property was taken by any of the governments and converted to its own use, it should be credited on reparations. Is that correct?

Undersecretary WINSTON. Yes, sir.

Secretary KELLOGG. I have not it before me but that is the substance of it. Mr. Hughes's reply, as you will see by this correspondence, to the British Government was that if the alien property and the ships were finally taken by the United States, of course, it would be credited on claims.

Senator JONES of New Mexico. And the authority for the Congress to so apply that alien property was expressly provided for, in the Berlin treaty.

Secretary KELLOGG. Oh, yes: the Berlin treaty adopting the provisions of the Versailles treaty.

Senator JONES of New Mexico. Yes.

Secretary KELLOGG. The Berlin treaty laid down, as you know—but I think I am going over a lot of matters that you know just as well as I do, Senator Jones—it contained the resolution of the Congress providing for the ending of the war. That resolution provided that the United States should have the right to hold this property as security. Have you that resolution here?

Senator BAYARD. That is the Porter-Knox resolution, I take it?

Secretary KELLOGG. Yes; that is the Knox resolution. Now, in the autumn of 1925 the German Government wrote a note to me claiming that under the Knox resolution and the Berlin treaty the

United States simply held that property as security for American claimants, and that by the Dawes plan she had made adequate provision.

Senator JONES of New Mexico. Under the Knox resolution that we should hold it until suitable provision was made for the payment of the claims, was that it?

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. And Germany insisted that our acceptance of the 2½ per cent under the Dawes reparation plan was the suitable provision.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. All right, go ahead.

Secretary KELLOGG. Now, that note was sent to me in August, 1925. I had assumed that the Congress of 1925-26 would settle this question of alien property, and so I did not answer the note at first, but told the German ambassador that I did not agree with his claim at all. When Congress adjourned, or at least when it appeared that it might soon adjourn—and I do not remember the date that Congress adjourned last spring—

Senator REED of Pennsylvania. July 3.

Secretary KELLOGG. Before the Congress adjourned, and when it was quite evident to me, or at least I thought the Congress would not dispose of the question of alien property during the session, I answered the German ambassador's note, setting out, in substance, that the United States claimed the right to apply this property, not only to hold it as security but to apply it; that the Knox resolution was not the only agreement, that under the Berlin treaty and the Knox resolution the United States had the right to apply that property to the payment of claims of American citizens in the United States. You can read the note as it is all stated here in this paper.

Senator JONES of New Mexico. May I inquire whether you got any reply to that note of yours from the German Government?

Secretary KELLOGG. No; I did not get any reply until December 9, 1926. When Senator King's resolution was passed by the Senate I asked permission of the German Government to publish this correspondence and to send it to Congress, but I could not get the permission at that time, though I did get the consent of the British Government, and of the other Governments, to publish the balance of the correspondence that is in this document.

Secretary JONES of New Mexico. Has the German Government made any reply to your note?

Secretary KELLOGG. I was coming to that just in a moment, if you will give me an opportunity.

Senator JONES of New Mexico. All right, I beg pardon.

Secretary KELLOGG. Finally I told the German Government, just before the Congress met last December, that I must send the correspondence up to the Congress pursuant to that resolution, whereupon the German ambassador handed me a note, found on page 40 of this document which is before you, document No. 173, in which the ambassador said:

In your note of May 4, 1926, Your Excellency set forth in considerable detail the legal position of the Government of the United States concerning the release of German property and added that the handling in practice of the question

is to be kept separate from the legal position and that the Congress of the United States, for which the decision concerning German property must be reserved, is now considering the question.

In view of that explanation my Government would, although its legal position differs from that stated in the note, refrain for the present from a discussion of the diverging legal positions and confine itself to expressing the hope that the deliberations of this Congress will arrive at some practical result that will be satisfactory to the nationals concerned on both sides.

Senator JONES of New Mexico. So the German government had never receded from its position as stated in its note to you of August, 1925.

Secretary KELLOGG. Apparently not.

Senator BAYARD. When the German ambassador sent you this last letter, to which you refer, had the decision of the United States Supreme Court in the Chemical Foundation case, been handed down?

Secretary KELLOGG. Yes; I rather think it had. I am not sure, however, of that matter, and the record will show the exact date. But, of course, the position taken by me in that note not only was sustained by the Supreme Court, but it is perfectly evident on the face of the document that Congress is free to exercise its own judgment as to the disposition of this property. There is no doubt about that.

Senator JONES of New Mexico. This bill which has passed the House of Representatives does utilize a part of that German property.

Secretary KELLOGG. That is right.

Senator JONES of New Mexico. And it has been stated in the press, and I think on the floor of the House a number of times, that that bill as passed by the House was satisfactory to everybody, and that all parties had agreed to it.

Secretary KELLOGG. Perhaps so.

Senator JONES of New Mexico. Now, I should like to know whether there has been any agreement in regard to it by the German Government?

Secretary KELLOGG. I do not know a thing about that, Senator Jones.

Senator JONES of New Mexico. Is not your department the one which would know about it if there were such an agreement?

Secretary KELLOGG. How do you mean?

Senator JONES of New Mexico. By what authority would any other department of the Government have any such dealings or direct knowledge?

Secretary KELLOGG. Do you mean agreement by the German Government that this property should be taken?

Senator JONES of New Mexico. That this bill as it passed the House of Representatives is acceptable to the German Government.

Secretary KELLOGG. I should think they would notify me.

Senator JONES of New Mexico. I should think so, too.

Secretary KELLOGG. As to the question of any agreement between German claimants to property and the American claimants, of course naturally, that would not come to my attention at all.

Senator JONES of New Mexico. Perhaps not, but I am referring now to any agreement on the part of the German Government.

Secretary KELLOGG. I know of no agreement on the part of the German Government in regard to that matter at all.

Senator CURTIS. What did the treaty provide in reference to the disposition of this property? There might be authority according to that.

Senator JONES of New Mexico. I was just coming to that. If you will take the treaty of Berlin you will find that the preamble to the Knox resolution, or the appropriate provision of the Knox resolution is recited as a preamble to the treaty.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. But after reciting the preamble, then comes the treaty itself.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. And is not the treaty itself, beginning with article 1, 2, and so on, the only agreement which has been entered into between the German Government and the Government of the United States with respect to claims, or this property?

Secretary KELLOGG. That is in the main body of the treaty, I take it; the Knox resolution is in the main body of the treaty.

Senator JONES of New Mexico. Let me call attention to this fact—

Senator KING. While Senator Jones is looking up something, let me interject by saying that the treaty of Versailles and the treaty of Berlin was each an appropriation of the usufruct, if not the corpus, of all the property held by the Alien Property Custodian. It was the assertion of Germany of the definite right under the old constitution, as well as under the Ebert constitution, to expropriate property, as to the corpus or use of it, of any citizens for any purpose it deemed appropriate. Both of those treaties constitute expropriation of that property. Therefore, it is quite clear as to what the contention would be, and I took the precaution when the Winslow bill was passed to advise the Treasury Department and the State Department that before we paid out any part of that, approximately \$50,000,000, that is, on payments up to \$10,000—we should get an express agreement from the German Government consenting that that should be done, because she had expropriated the property.

Senator REED of Pennsylvania. Have we not received that express agreement in the treaty of Berlin for the sort of application we make in this bill?

Senator JONES of New Mexico. I think the matter can be made clear if we will just get the expression in this Berlin treaty. The treaty itself, in this document, is embodied in the proclamation by the President of the United States, and the first whereases are a part of the proclamation and not a part of the treaty. The treaty itself is as follows:

Considering that the United States, acting in conjunction with its co-belligerents, entered into an armistice with Germany on November 11, 1918, in order that a treaty of peace might be concluded; considering that the treaty of Versailles was signed on June 28, 1919, and came into force according to the terms of its article 440, but has not been ratified by the United States; considering that the Congress of the United States passed a joint resolution, approved by the President July 2, 1921, which reads, in part, as follows:

And then is inserted the essential portions of the so-called Knox resolution. After that recital, and under a quotation, the treaty proceeds as follows:

Being desirous of restoring the friendly relations existing between the two nations prior to the outbreak of the war; have for that purpose appointed their plenipotentiaries; the President of the United States of America, Mr. Lorring Dresel, ambassador of the United States of America to Germany, and the President of the German Empire, Dr. Frederick Rosen, Minister for Foreign Affairs, who, having communicated their full powers, and found to be in good and due form, have agreed as follows:

Then follows, as I conceive it, the full agreement between the German Government and the United States Government. The Knox resolution was not an agreement between the United States and Germany; the Knox resolution simply declared the war at an end, and declared it to be the intention of the Government of the United States, among other things, to hold this property as security for certain claims. That is recited in this treaty as a mere preamble, and that is agreed to in the language of the treaty, these representatives, who, having communicated their full powers, found to be in good and due form, "Have agreed as follows." Then, Mr. Secretary, is not the whole agreement between the two Governments comprised in what follows?

Secretary KELLOGG. Yes; and let me tell you what it is, please. Article I of that treaty provides:

Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations, or advantages specified in the aforesaid joint resolution of the Congress of the United States of July 2, 1921, * * *

And you understand that that is the Knox resolution.

Senator REED of Pennsylvania. And that puts the Knox resolution right into the treaty?

Senator SHORTRIDGE. Yes; it carries all of its provisions right into the treaty, does it not?

Secretary KELLOGG. Yes; it carries all those provisions right in the treaty. You will see that that is explained in my note to Germany.

Senator JONES of New Mexico. Then what follows that with respect to this property.

Secretary KELLOGG. I continue reading—

including all the rights and advantages stipulated for the benefit of the United States in the treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such treaty has not been ratified by the United States.

And then follows certain specified provisions of the treaty of Versailles.

Senator JONES of New Mexico. Then what right did the Government of the United States obtain under the Berlin treaty with respect to this alien property?

Secretary KELLOGG. The right of Congress to appropriate the property as Congress may determine. It is entirely a question for the Congress of the United States.

Senator WATSON. In other words, is it not necessary to obtain the consent of the German Government at all?

Secretary KELLOGG. Not at all.

Senator WATSON. In order to enable the Congress to pass this bill?

Secretary KELLOGG. No.

Senator JONES of New Mexico. What do you think of the contention of the German Government that our acceptance of 2½ per cent was the suitable provision referred to in the Knox resolution?

Secretary KELLOGG. I do not think it is correct at all.

Senator JONES of New Mexico. The provisions of the Versailles treaty which were incorporated in this treaty of Berlin means this: That you think that this Government has a right under the Berlin treaty to enforce those provisions?

Secretary KELLOGG. Do you mean to apply this property to the payment of the claims?

Senator JONES of New Mexico. Yes.

Secretary KELLOGG. Yes; I think so.

Senator JONES of New Mexico. Well now, then, let me ask you further—

Secretary KELLOGG (continuing). I state in my note, and if you will read it you will see that I covered that provision. You will find it on page 39 of this paper known as Document No. 173:

Accordingly under the treaty of Berlin the United States has the absolute right to apply the property in the hands of the Alien Property Custodian, or any part of it, to the payment of the awards of the Mixed Claims Commission, United States and Germany, and the awards of the Tripartite Claims Commission, United States, Austria, and Hungary.

Senator JONES of New Mexico. Let me ask you this: Was such provision in that treaty contrary to any of the policies, traditional or otherwise, of the United States with respect to dealing with alien property?

Secretary KELLOGG. You are just as good a judge of that as I am, and I have no doubt know more about the history of what this country has done in such cases than I do.

Senator JONES of New Mexico. Let me ask you, then, whether or not that provision in the Berlin treaty was considered by the State Department as being in contravention of any traditional policy of the United States at the time you entered into that treaty?

Secretary KELLOGG. I assume not, or else Mr. Hughes would not have entered into it. I can not state what was in the mind of Mr. Hughes, but I judge by the treaty that he did not think it was contrary to the policy. But it must be stated in addition to that, that that treaty did not compel the United States to take this property. The question of the taking of this property was a question left entirely to Congress under the congressional act under which the property was taken by the United States.

Senator WADSWORTH. Might it not be said that if there was any change from what might be termed our traditional policy, that it occurred when Congress passed the alien property act?

Secretary KELLOGG. I do not know that I quite understand that question.

Senator WADSWORTH. Might it not be said that if any change took place in our traditional policy it occurred under the Alien Property Custodian act itself, and any negotiations carried on by the Secretary of State after the conclusion of hostilities required that the provisions of that act should be taken into account.

Secretary KELLOGG. Oh, yes, and it was recognized that the property should be held and disposed of by the Congress and by no one else.

Senator REED of Pennsylvania. And the Knox-Porter resolution showed the policy of the Congress; it was a clear indication to the State Department of the declared policy of the Congress.

Secretary KELLOGG. Yes.

Senator CURTIS. Did not the Supreme Court in some case that went up to it for final decision declare that we had the right to confiscate this property if we so desired?

Secretary KELLOGG. Yes.

Undersecretary WINSTON. Yes; and that we had done it.

Senator CURTIS. But instead of taking advantage of that power of confiscation, we have concluded to apply it to the payment of claims, or to return the property to them.

Secretary KELLOGG. The policy on that question is for the Congress. But as to the legal right to take the property there can not be any question.

Senator REED of Pennsylvania. May we not now pass on from the attitude of Germany to the attitude of our associates in the war? Some of us are very much concerned to know what the effect of this law will be upon the claims of Great Britain, France, Italy, Belgium, our associates, with regard to our right to continue to enjoy payment from the Dawes annuities.

Senator JONES of New Mexico. Ought that not to be prefaced by a statement that these other governments—

Secretary KELLOGG. I suggest that this should not be recorded.

The CHAIRMAN. The shorthand reporter will lift his pen.

(After a few minutes the recording of the proceedings was resumed, as follows:)

Secretary KELLOGG. Of course I understand that the other governments have appropriated the alien property, and prior to the Dawes plan I believe Germany did undertake or did, rather, compensate her nationals for the loss of the property. How much she compensated them, or how much was the value of the currency with which she compensated them I can not tell you. It has been claimed that the compensation was in depreciated currency. I can not give that because I do not know enough about it.

Senator BAYARD. In making the adjustment by the Allied Governments with Germany, they did it on the basis of the gold mark of the value 23 cents plus, did they not?

Secretary KELLOGG. I can not tell you.

Senator BAYARD. What I have in mind, and I am diverting somewhat, is this: Was there not a rule established by our Mixed Claims Commission, United States and Germany, that the mark should be valued at 16 cents plus?

Secretary KELLOGG. I can not tell you that. I have not kept tract of the Mixed Claims Commission. My assistant tells me that that arrangement covered certain bank deposits.

Senator BAYARD. If that were done it would be done by the Mixed Claims Commission itself and not by the State Department?

Secretary KELLOGG. There is the point, that Germany claims to have compensated some of her citizens, and now claims that she is entitled to offset that amount against the Dawes payment. And they are arbitrating that matter now, but there has been no decision by the arbitrators so far as I know.

Now we are coming to something that I think should not appear on the record.

Senator HARRISON. I should like to have a record of all these things so that I might be able to go over them and study them.

Senator REED of Pennsylvania. Then you certainly would not expect the Secretary of State to as frankly discuss the matter with us.

Senator JONES of New Mexico. I should like to have some kind of a record made of this.

The CHAIRMAN. The reporter will write this on a separate piece of paper from his regular stenographic report and furnish it to the clerk of the committee separate and apart from the report, but at the time he delivers the report.

Senator GEORGE. I understand it to be the present contention of Germany that she has made compensation to certain of her nationals, and that arbitration proceedings are now pending to determine that very question.

Undersecretary WINSTON. That has to do only with relations between Germany and England.

Mr. PHENIX. She has claimed the right to credit on the Dawes annuities all sums so paid since September 1, 1924.

Secretary KELLOGG. She has not paid anything on account of ours, for property that we took.

Senator GEORGE. I understand you to say that Germany has claimed that she has reimbursed her nationals.

Secretary KELLOGG. As to Great Britain, Italy, and other nations, but not to us.

Senator JONES of New Mexico. Is it not reasonable to assume that having reimbursed her nationals that as to those nationals she would contend the same as to our country.

Secretary KELLOGG. I think so.

Senator GEORGE. As I understand it those reimbursements have been made; not to her nationals on account of any claims against us.

Secretary KELLOGG. No.

Senator GEORGE. But as against other countries?

Secretary KELLOGG. Yes.

Senator GEORGE. But so far as the State Department is advised, has she made any payments to her citizens?

Secretary KELLOGG. On account of our nationals?

Senator GEORGE. Yes?

Secretary KELLOGG. Not that I know of.

Senator BAYARD. In that connection I call attention that Representative Mills in a speech said:

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

Secretary KELLOGG. I do not know about that.

Representative MILLS. Interpreting my own statement let me say that that was done in the form of subsidies rather than in the form of direct compensation.

Senator BAYARD. But it is tantamount to compensation for the loss of ships taken by this country.

Representative MILLS. It would not be legal, because it is in the form of a subsidy on ships now being built, rather than compensa-

tion for ships seized; and as I understand, as far as those claims are concerned it is about 1 per cent of the claim and that is in some cases, and in some others not more than 4 or 5 per cent.

Senator WATSON. We are to receive a certain percentage of the total reparation sum, are we not?

Secretary KELLOGG. Yes.

Senator WATSON. Suppose that Germany, by reason of reimbursement of her nationals for loss of property in England, France, Belgium, Italy, and these other countries, were to bring down that reparation sum very greatly in the way mentioned, then we would be affected by it, would we not?

Secretary KELLOGG. We certainly would be.

Under Secretary WINSTON. If we win the arbitration it will simply credit the amount to England, but it does not mean to us.

Secretary KELLOGG. Do you mean on account of payments made to other countries?

Senator WATSON. Yes. We are to have $2\frac{1}{4}$ per cent of the whole sum. Now, if that sum is cut down by reason of this arrangement of German claims, then would it not affect the $2\frac{1}{4}$ per cent that we get.

Senator KING. Yes; certainly.

The CHAIRMAN. No; that is not the effect at all.

Senator WATSON. I should like to have your interpretation of it, Mr. Secretary.

Secretary KELLOGG. The question is whether if the arbitration now pending should be decided that Germany is entitled to credit on the Dawes payments, the amount she has paid in reimbursing for alien property taken from her citizens by England, France, Italy, and Belgium—

Senator JONES of New Mexico (interposing). Or in event we should do so.

Secretary KELLOGG. Let me answer the other first. Whether that would cut down the total out of which we could be entitled to our $2\frac{1}{4}$ per cent. I should not like to answer that right off. Of course we should take the position that that should be charged against those countries' portion and not against ours. On the other hand, of course the Spa agreement made between the allied powers divided up all payments by Germany, but did not take us into consideration. So we had to get an agreement that out of the sums available for distribution and reparations we should receive $2\frac{1}{4}$ per cent, and undoubtedly the allies would make claim that the whole of the reparations must be reduced, and that therefore our amount would be reduced. It certainly would not be fair to us, but I do not know what the arbitration will decide. Do you want me to finish my statement here this morning?

The CHAIRMAN. If you will, and then we will take a recess.

In my dealings with the various Governments about our receiving our priority for Army costs and the $2\frac{1}{4}$ per cent which we finally got—I was instructed to accept that amount if we could not get any more, and as you know it took us a long while to get that—the Government that most strenuously objected was the British Government. Mr. Churchill insisted that we were not entitled to anything.

Varying amounts were discussed during our negotiations; and we finally said, after trading back and forth, that we would not accept anything less than the percentage equivalent of about 45,000,000 gold marks. This worked out to approximately 2 $\frac{1}{4}$ per cent, and we agreed on that figure. The other Governments seemed to be favorable to our receiving a proportion. They said of course they were not going to be paid in full or anywhere near it under the Dawes plan payments, but nevertheless they thought we ought to have a fair proportion of such payments to cover our claims.

Senator JONES of New Mexico. Did not that come about in this way: Under the Wadsworth agreement, which was ratified by all Governments except France, we were to be repaid our \$255,000,000 in about 12 payments.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. And if any default should be made in the first four of those payments it should be added on to the other eight, and at the end of 12 years we would get our \$255,000,000. Then did not the State Department of our Government express its willingness to divide that payment with American claimants, and that they were to extend the payment, without interest, of the cost of maintenance of our Army in Germany, to a period of 24 years, and through that process they obtained an agreement for 2 $\frac{3}{4}$ per cent? But upon the whole the Reparations Commission was not to be charged with any greater sum than it would have been charged with under the Wadsworth agreement. So we have just surrendered from the payment of our Army costs the amount of money which we are willing to pay over to the American claimants; isn't that our arrangement, how the arrangement was brought about?

Secretary KELLOGG. No.

Senator JONES of New Mexico. And is not the effect of it, too, to extend over a period of 24 years the payment of our Army costs, without interest, and this Government is giving us that much by way of getting some compensation for American claimants from the 2 $\frac{1}{4}$ per cent?

Secretary KELLOGG. I never heard of any such discussion.

Senator JONES of New Mexico. Is not that mentioned in your letter to the British ambassador, or Mr. Churchill?

Secretary KELLOGG. No; I do not remember any such discussion as that, but if there was, it is all in this document.

Senator JONES of New Mexico. My recollection is that it is so.

Secretary KELLOGG. If you can show it to me, all right, but I do not remember any such discussion.

Senator EDGE. The fact of it was that France would not agree to the Wadsworth agreement.

Secretary KELLOGG. That is true.

Senator EDGE. So there was not any Wadsworth agreement.

Secretary KELLOGG. I undertook to get all we could for Army costs, and was finally instructed, as the correspondence shows there, by Mr. Hughes—

Senator JONES of New Mexico. Does that correspondence show it?

Secretary KELLOGG (continuing). I was finally instructed by Mr. Hughes to accept 55,000,000 gold marks a year for the Army costs and 2 $\frac{1}{4}$ per cent for the other.

The CHAIRMAN. The committee will now stand adjourned until Monday morning at 10 o'clock in this room.

Secretary KELLOGG. Is there anything more that you want with me Senator Jones?

Senator JONES of New Mexico. Yes; there is.

Secretary KELLOGG. I wish you would tell me in advance what it is, so I may look it up.

The CHAIRMAN. The committee now stands adjourned until Monday morning at 10 o'clock.

(Whereupon, at 12.10 p. m., the committee was adjourned until Monday morning, January 10, 1927, at 10 o'clock.)

RETURN OF ALIEN PROPERTY

MONDAY, JANUARY 10, 1927

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

The committee met, pursuant to adjournment on Saturday, at 10 o'clock a. m., in room 312, Senate Office Building, Senator Reed Smoot (chairman) presiding.

Present: Senators Smoot (chairman), McLean, Curtis, Watson, Reed of Pennsylvania, Ernst, Edge, Shortridge, Jones of New Mexico, Harrison, King, Bayard, and George.

Present also: Representative Mills, of New York, and Under Secretary of the Treasury Winston.

The CHAIRMAN. If the committee will come to order we will proceed with the hearing. When the committee adjourned on Saturday Secretary Kellogg was making a statement in relation to the provisions of the bill, and if the Senators are ready now to proceed we will be glad to hear further from Secretary Kellogg.

STATEMENT OF HON. FRANK B. KELLOGG, SECRETARY OF STATE—Resumed

Secretary KELLOGG. Will Senator Jones tell me whether his question, propounded just before we adjourned on Saturday, included the matter of confiscation?

Senator JONES of New Mexico. No; I asked about the policy of the United States with respect to disposing of the German property we have seized, in accordance with the provisions of the Berlin treaty. Confiscation, I take it, may be quite a different thing from that.

Secretary KELLOGG. I do not know of any other treaty that this Government has ever had like the Berlin treaty. As I stated on Saturday, there is no question but what the treaty gives the United States the right to take the alien property and apply it in payment of American claims against Germany. That is also a principle of international law. I think that is the only answer I can give to that.

Senator CURTIS. You might go further and state that the Supreme Court of the United States decided in the Chemical Foundation case that we had the right to confiscate the property.

Secretary KELLOGG. That we had the right to take the property and apply it on claims; yes. I stated that on Saturday.

Senator JONES of New Mexico. And that was the purpose of incorporating into the Berlin treaty the provisions of the Knox resolu-

tion, and the treaty of Versailles, so far as they related to that question?

Secretary KELLOGG. Undoubtedly that was one purpose.

Senator JONES of New Mexico. Was that contrary to any traditional policy of the United States, so far as you know?

Secretary KELLOGG. I do not see how I can answer that question. I have not had time since Saturday, with the other things burdening me, to go into the history of that matter. You will find in the hearings by the House committee on the Mills bill, which preceded the hearings on this bill, at page 153 and subsequent pages, some discussion of that subject, but I have not even had time to examine it. You have a copy of those hearings, but I have not had time to read them.

Senator JONES of New Mexico. Yes; I have a copy of those hearings.

Secretary KELLOGG. Now, I also refer you to a publication headed "Selected Topics Connected with the Laws of Warfare," prepared by Joseph R. Baker and Lewis W. McKernan, published by the Government Printing Office, which you can get there. I have only one copy of it. It contains a long discussion, but I have not read it. There may be something in it that would throw light on the question propounded by Senator Jones. But, as I have said, this is the only copy I have and I could not leave it with you. But you could get it from the document room or the Government Printing Office.

The CHAIRMAN. I suggest, Senator Jones, that inasmuch as the Secretary can not leave his one copy with you, that you will have no trouble in getting a copy.

Senator JONES of New Mexico. Let me see what it is.

Secretary KELLOGG. Here it is.

Senator CURTIS. What is the number of the document?

Senator JONES of New Mexico. It is entitled "Selected Topics Connected with the Laws of Warfare," as of August 1, 1914, prepared by Joseph R. Baker and Lewis W. McKernan, June, 1919.

Secretary KELLOGG. I have never examined it, Senator Jones.

Senator CURTIS. Has it a document number on it?

Secretary KELLOGG. It has not.

Senator JONES of New Mexico. It appears to contain a discussion of enemy property in belligerent territory, beginning on page 150 of this document. I have not seen it, and the Secretary says he has not.

Secretary KELLOGG. Senator Jones also asked for a report of the second committee of experts, and I have a copy of it here which I will leave with the committee.

(The printed document referred to was identified by being marked "Exhibit No. 1, Secretary Kellogg.")

The CHAIRMAN. Mr. Alvord, will you just take that document and get some copies so as to send one to Senator Jones and any others who may wish a copy.

Senator JONES of New Mexico. Now, Mr. Secretary, in the Berlin treaty or rather that part of the Berlin treaty which is known as the Knox resolution, it is provided that this alien property shall be retained by the Government of the United States until suitable provision has been made for the payment of the American claims.

I will ask you whether or not there was ever any correspondence between the United States and German Government, or between the State Department of our Government and any representative of the German Government, with reference to making suitable provision for the payment of American claims.

Secretary KELLOGG. The only correspondence is given in Senate Document 173, which I sent to the Senate December 13, 1926, and which is the correspondence between the German Government asking for a return of the property and my answer thereto, as well as the German Government's reply to my note. That is all.

The CHAIRMAN. At what page in the document does it begin?

Secretary KELLOGG. It begins on page 34 of Document No. 173. Then, of course, there was a long correspondence between Mr. Hughes and the German Government about the claims agreements, which begins on page 14 of Senate Document 173.

Senator JONES of New Mexico. I observe in Senate Document 173 that there is a tentative draft of the agreement for a mixed claims commission, but there does not appear in that document the agreement which was finally executed by the State Department and the representative or representatives of the Germany Government. Where is the mixed claims commission agreement finally agreed to?

Secretary KELLOGG. Twenty-five copies were sent over to the committee on Saturday.

Senator JONES of New Mexico. May I have one?

Secretary KELLOGG. It is "Treaty Series 665."

Senator MCLEAN. I see that it is here right before each of us on the table.

Senator JONES of New Mexico. All right. Before advertizing to that instrument I desire to call attention to the fact that Senate Document 173, which has been referred to by Secretary Kellogg, so far as I have been able to ascertain, contains nothing bearing upon the question of a suitable provision for the payment of American claims. Is that true? Is there anything in Senate Document 173 which makes reference to the manner of payment of American claims?

Secretary KELLOGG. I have not read that correspondence for some time, but I do not think there is.

Senator JONES of New Mexico. May I ask if the State Department has ever made any attempt to agree with the German Government upon that provision of the Knox resolution which provides that the German property shall be retained by the United States until suitable provision is made for the payment of American claims?

Secretary KELLOGG. The only arrangements I know of were those made during Mr. Hughes's administration, whereby the Government of the United States was to receive pay for its Army costs and 2 1/4 per cent of the Dawes payments to apply on American claims.

Senator JONES of New Mexico. Do you want us to understand that we had no agreement with the German Government regarding the distribution of funds under the Dawes plan?

Secretary KELLOGG. No; we had no agreement with the German Government of that kind.

Senator JONES of New Mexico. Then are we to understand that this Government has made no effort to bring about an agreement

between the United States and the German Government providing for suitable provision for the payment of American claims?

Secretary KELLOGG. That is, do you mean, to negotiate with the German Government for the payment of those claims to us directly?

Senator JONES of New Mexico. Or in any other way, for payment to us directly or otherwise.

Secretary KELLOGG. Not that I know of.

Senator CURTIS. If I may interpose right there, let me say: As I understand it that whole question is in the hands of Congress. We reserved to ourselves the right to dispose of the seized property and to use it in anyway we pleased in the settlement of these debts.

Secretary KELLOGG. Absolutely.

Senator CURTIS. And therefore it is wholly in our hands to decide it.

Secretary KELLOGG. In the hands of Congress to decide it.

Senator JONES of New Mexico. That is precisely the point which I wanted to know about.

Secretary KELLOGG. It is entirely in the hands of the Congress as to what you shall do with this seized property.

Senator JONES of New Mexico. Then there has been no effort made by the State Department to bring about an agreement with Germany with respect to the manner of payment of American claims, and the State Department has felt that that was a question resting with the Congress; is that true?

Secretary KELLOGG. The State Department has felt that the United States had the right to hold this property; that the question of whether Congress would apply it in payment of claims was one entirely for the Congress to decide. It was reserved to Congress by the act taking over the alien property, and has been in no way interfered with by any treaty provision.

Senator EDGE. May I interject right there: On the other hand, the State Department has been represented unofficially at various conferences, whose action might have a bearing upon the distribution of these assets and their return.

Secretary KELLOGG. Oh, yes; the State Department was represented at the Paris conference, where the agreement was made for the payment of certain sums to the United States out of Dawes annuities, for the payment of Army costs and the American claims.

Senator JONES of New Mexico. But not at any conference in which Germany was officially represented.

Secretary KELLOGG. No; Germany was not represented at the Paris conference. The United States was represented, but not by an official delegate, at the London conference where the Dawes plan was put in force.

Senator JONES of New Mexico. And there was no agreement between the United States and Germany that the Dawes plan should go into effect?

Secretary KELLOGG. No.

Senator JONES of New Mexico. I observe in the Knox resolution—

The CHAIRMAN (interposing). Just before you ask that question let me inquire: Do you contend that Germany should have had a voice in that?

Secretary KELLOGG. Germany did have her representatives present at the London conference.

The CHAIRMAN. I thought you said she was not represented.

Secretary KELLOGG. I said she was not represented at the Paris conference.

Senator JONES of New Mexico. He said the United States had no official delegates. I notice by the Knox resolution, which became a part of the Berlin treaty, that it was agreed also that this property should be retained by the United States until American claims against Austria and Hungary should be paid. I ask you to state what has transpired between the State Department and Germany, or anybody else, with reference to the adjustment of claims against Austria and Hungary.

Secretary KELLOGG. Well, a claims commission has been created, similar to the German Claims Commission, for the settlement of claims by the United States against Austria and Hungary. I can not give you now the status, as to how much work they have done on that, but I can prepare it and send it up if you desire.

The CHAIRMAN. I just suggest that we have loaned Austria \$20,000,000 as a new indebtedness following the war.

Secretary KELLOGG. I do not remember how much we have loaned her, but Congress authorized a loan to Austria, and I think also a postponement of our claims.

Senator JONES of New Mexico. In using the expression "our claims," do you mean American claims or claims of the American Government?

Secretary KELLOGG. Of the American Government. I do not remember the amount that was loaned, but your own legislation will show that.

Senator JONES of New Mexico. I do remember the fact that we made a loan to Austria.

The CHAIRMAN. And I think it was \$20,000,000.

Senator JONES of New Mexico. I do not remember, however, that the Congress ever decided to postpone any claims of American nationals against Austria or Hungary. If I am in error about that I should like to be corrected.

Secretary KELLOGG. I would not say, Senator Jones, that they postponed them. My recollection is, and I am speaking only from recollection, that they subordinated them to that. I can look it up if you desire.

Senator JONES of New Mexico. I think it important that we have that in the record right now, what provision was made, if any, regarding the payment of claims of American nationals against Austria and Hungary.

Secretary KELLOGG. If you want me to send up the claims convention and the act of Congress, and what was done under it—is that it?

Senator JONES of New Mexico. Yes.

Secretary KELLOGG. I will see that that is done.

The CHAIRMAN. Do you wish it put in the record at this point when received?

Senator JONES of New Mexico. Yes.

The CHAIRMAN. The shorthand reporter will make a note accordingly.

Senator HARRISON. Would it not be well to state in that connection what were the reasons for the loaning of money at the time?

Secretary KELLOGG. I could not tell you that.

Senator HARRISON. My recollection is that it was to quiet Bolshevism, to prevent Austria from going over with Russia.

Secretary KELLOGG. I do not remember the debates in Congress although I think I was there when it was done.

Senator JONES of New Mexico. Have you any record or information as to the amount of the claims of the American nationals against Austria and Hungary?

Secretary KELLOGG. We probably can give you a list of claims that already have been filed before the commission. But as the time for filing has not expired there may be other claims filed.

Senator JONES of New Mexico. Could you give an estimate as to the amount of the claims already filed?

Secretary KELLOGG. I could not give you any estimate to-day, but I could send it up. Mr. Phenix thinks that Mr. Bonynge, who is the American agent, testified before the House Ways and Means Committee as to the amounts of those claims.

Senator JONES of New Mexico. Will they amount to a considerable sum?

Secretary KELLOGG. I presume they do, but I have not looked into that matter.

Senator JONES of New Mexico. What property of Austria and Hungary, or the nationals of Austria and Hungary, is in the custody of the United States, if any?

Secretary KELLOGG. That is also shown, Mr. Phenix tells me, in the testimony taken by the House Ways and Means Committee, but I would have to go to the Alien Property Custodian to find out about that, and I have nothing to do with the Alien Property Custodian at all.

The CHAIRMAN. In the Annual Report of the Secretary of the Treasury, at page 33, and this report being for 1923, a full statement is made.

Secretary KELLOGG. Those records are not in my office.

The CHAIRMAN. It is short, and perhaps I might just as well read it right here:

Among the obligations received from the United States Grain Corporation on account of sales of flour for relief purposes under the act of March 30, 1920, is one of a series of Austrian Government bonds of a face value of \$24,055,708.92, designated as "Relief Series B of 1920," described on page 23 of the annual report of the Secretary of the Treasury for the fiscal year ended June 30, 1922. On February 20, 1923, the Reparation Commission released from reparation claims for a period of 20 years certain assets and revenues of the Austrian Government, in order that they might be used as security for the Austrian Government guaranteed 20-year loan, maturing in 1943, issuing pursuant to a plan for control of Austrian finances embodied in three protocols signed at Geneva on October 3, 1922. All governments holding relief obligations were asked to take similar action with respect to the charge enjoyed by these bonds. In this connection, acting under the authority conferred by the joint resolution passed by Congress and approved by the President on April 6, 1922, copy of which also appears on page 23 of last year's annual report, and pursuant to advices received through the Department of State, the Secretary of the Treasury, on behalf of the United States, on June 9, 1923, formally extended to June 1, 1943, the time of payment of the principal and interest of the Austrian obligation held by this Government and consented to

subordinate the lien of the obligation upon such assets and revenues of the Austrian Government to that of the above-described loan, without prejudice, however, to the priority over costs of reparation to which the obligation is entitled.

Senator JONES of New Mexico. That has nothing to do with the point I had in mind.

The CHAIRMAN. I thought you asked for the value of the claims?

Senator JONES of New Mexico. I referred to claims by American nationals, and the property in the custody of the United States belonging to Austria and Hungary or their nationals. That article just read by you relates only to the loan which we made to Austria.

Secretary KELLOGG. I suppose Mr. Bonynge can give you the amount of claims filed before the Claims Commission, and the Alien Property Custodian could give you the information as to the property in his hands. Of course, I have no such information in my office.

Senator HARRISON. Senator Jones, before you proceed may I interpose a question.

Senator JONES of New Mexico. Certainly.

Senator HARRISON. Senator Smoot, did I understand that the loan was for \$20,000,000 worth of grain furnished by us, for which Austrian bonds were taken?

Under Secretary of the Treasury WINSTON. That is correct.

Senator HARRISON. It was not money that we loaned, but for grain that we bought and sent over there.

Senator REED of Pennsylvania. It was to the same effect. We sent them grain soon after the armistice in order to give them immediate relief. They had the grain, which this country had purchased, and it was the same as if we had loaned them the cash with which to pay their debts.

Senator HARRISON. Yes, but in fact it was for grain that we sold them. It was at a time, too, when the price of corn and wheat was way down, and we wanted to help the corn and wheat growers.

Senator JONES of New Mexico. I am just informed that the amount of Austrian property held by the Alien Property Custodian is in the neighborhood of \$12,000,000, estimated. Have we any record of the claims against Austria and Hungary on behalf of American nationals?

Secretary KELLOGG. I have no doubt the claims commission has a record of all claims that have been presented. If you wish, as I stated before, I will have those claims scheduled and sent up to you.

Undersecretary WINSTON. I might suggest that the time for filing claims before the Austrian-American Claims Commission has not expired. That is the reason why we have not a full statement.

Secretary KELLOGG. Yes; that is what I said a moment ago.

Senator JONES of New Mexico. Is there anything in the hearings before the House committee regarding this matter?

The CHAIRMAN. So far as I have been able to find up to this time Mr. Bonynge's testimony is on the matter of German claims.

Secretary KELLOGG. I do not know about that.

Senator JONES of New Mexico. That was my recollection, although I have not read all of the hearings before the House Ways and Means Committee. Everything I have read in those hearings related only to claims against Germany, and related to German property.

Secretary KELLOGG. I do not know about that, Senator Jones. I did not appear before the House Ways and Means Committee, and have never read their hearings. I have not had time.

Senator JONES of New Mexico. The Berlin treaty provides that we shall retain German property until the claims of our nationals against Austria and Hungary shall be paid, or suitable provision is made for their payment. Has there been any correspondence between the United States and Germany with respect to that part of the Berlin treaty?

The CHAIRMAN. Let me say right here that in another place in the hearings I see that Mr. Bonynge does refer to the Austrian claims.

Secretary KELLOGG. In the note to the German Government, page 34 of Senate Document 173, followed by my reply, you will find a discussion of the rights of the United States to hold that property.

Senator JONES of New Mexico. I understand that, but in that correspondence, as I recall, no reference was made in your letter to the German ambassador regarding the claims against Austria and Hungary.

Secretary KELLOGG. On page 39 of Senate Document 173 I said:

Accordingly under the treaty of Berlin the United States has the absolute right to apply the property in the hands of the Alien Property Custodian, or any part of it, to the payment of the awards of the Mixed Claims Commission, United States and Germany, and the awards of the Tripartite Claims Commission, United States, Austria, and Hungary. The question whether this property shall be so applied, is, under the trading with the enemy act and under section 5 of the joint resolution of July 2, 1921, as incorporated in the preamble of the treaty of Berlin, reserved to the Congress. No agreement has been entered into by the Government of the United States which is in any way inconsistent with the rights of the Congress in this connection.

I see the word "by" seems to have been left out, and the print reads "entered into the Government of the United States." Whereas it should read "entered into by the Government of the United States."

Senator JONES of New Mexico. I remembered that statement in your letter, but in that letter there is no attempt made to enter into an agreement with Germany with respect to the payment of these Austrian claims.

Secretary KELLOGG. No. As I say, the Claims Commission, Austria, Hungary, and the United States, has been appointed, and the property could be held under the Knox resolution and the Berlin treaty to pay those claims if the Congress so desires.

The CHAIRMAN. In further reading the proceedings I find that Mr. Bonynge did refer to that matter, and I will just read it at this point:

Mr. BONYNGE. I have been asked to make a statement in reference to the American-Hungarian claims. It is impossible for me to give you any estimate as to what those claims will amount to. Under the agreement between Austria-Hungary and the United States, the time for filing claims does not expire until January 25, 1927, so that, of course, it is quite impossible for me to tell how much they will amount to.

Mr. NEWTON. Can you not give an approximation of the claims now filed?

Mr. BONYNGE. I can give an approximation of the amount of the claims now filed, probably, but that would be a very small indication of what they will ultimately be because the time has not expired.

Senator HARRISON. He says the time limit is January 25, 1927.

Senator SHORTRIDGE. Who fixed the time to be a sort of statute of limitation, Mr. Secretary?

Senator JONES of New Mexico. I assume that there was correspondence between the State Department and the representatives of Austria and Hungary with respect to the creation of a claims commission to ascertain the amount of claims against those Governments, was there not?

Secretary KELLOGG. I do not know. I would have to examine the correspondence to be able to tell you. It was before I was in office.

The CHAIRMAN. This statement says that Austria never seized American property.

Senator JONES of New Mexico. I am not talking about what Austria seized, but am talking about the property of Austria or of Austrian nationals seized by the United States, and about claims of American nationals against Austria, and so on. It appears that a claims commission has been created to ascertain those matters, and that a number of claims have been filed, but we do not know the amount or anything of that kind. I assume that there was some correspondence between the United States and the Governments of Austria and Hungary respecting the creation of this claims commission which I am now advised was created; is that so?

Secretary KELLOGG. I presume there was.

Senator JONES of New Mexico. I think it would be advisable for the committee to have that correspondence.

Secretary KELLOGG. All right.

(See p. —.)

The CHAIRMAN. Is that question propounded with the idea of including in this bill any matters affecting Austria and Hungary, because it is not referred to in the bill at all?

Senator JONES of New Mexico. Inasmuch as you have the right to hold that property, it is quite a significant fact that it is not included in the bill. Our treaty with Germany provided that we could hold German property for the payment of those claims.

Senator SHORTRIDGE. May I again ask when these claims against Austria and Hungary must be presented to the commission?

The CHAIRMAN. January 25, 1927.

Senator SHORTRIDGE. Is that limit included in the act?

The CHAIRMAN. It is in the claims convention.

Senator SHORTRIDGE. That was so as to claims presented against Germany too, was it not?

Secretary KELLOGG. Yes; it was the same.

Senator JONES of New Mexico. No; there was a time fixed in the agreement for the creation of the Claims Commission to deal with German claims, limiting the period for the presentation of such claims to six months. That was not in the act of Congress, however.

Senator SHORTRIDGE. That was what I wanted.

Senator JONES of New Mexico. But it was in agreement between the State Department and the representatives of the German Government.

Senator SHORTRIDGE. I asked the question because there are those who claim that the time was altogether too short and that certain claims which the holders contend were meritorious were not presented in time and therefore were not considered.

Senator JONES of New Mexico. And that they did not know about the limitation.

Senator SHORTRIDGE. Yes; and that the holders of those claims were not advised as to a limitation of time within which to present them.

Secretary KELLOGG. I think as to the German Claims Commission it was fixed by the notes between Mr. Hughes and the German Government. I think that is all in your record here.

Senator JONES of New Mexico. I think you are quite correct about that.

Secretary KELLOGG. What notice Mr. Hughes gave to claimants I can not tell you.

Senator JONES of New Mexico. I was just going to ask about that, whether or not there was any notice given to the public, to American claimants, or rather those having claims, as to the period of limitation which was fixed in the agreement between the State Department and the German Government, regarding the limitation of time for the presentation of claims.

Secretary KELLOGG. Well, I could not tell you, but I understand that everyone who wrote in to the Department of State was informed, and it was generally stated, or advertised in the press. But I should have to look that up to be able to tell you more definitely.

Senator JONES of New Mexico. I should like to have put in the record at this point any public notice given by the State Department to American nationals regarding the creation of the Mixed Claims Commission and the period of limitation for the presentation of claims.

Secretary KELLOGG. I will furnish you all that we have.

Senator JONES of New Mexico. That will be satisfactory.

Senator SHORTRIDGE. I have heard, as I now recall, that the commission itself issued some notice.

Senator JONES of New Mexico. I will include in my request any notice issued by the Mixed Claims Commission itself to the public.

The CHAIRMAN. And that information when furnished will be put in the record at this point, and the shorthand reporter will make a note accordingly.

(See p. —.)

Senator JONES of New Mexico. This bill, as stated a moment ago by the chairman of the committee, makes no reference whatever to the payment of claims of American nationals against Austria or Hungary, or any other countries allied with Germany, and my recollection is that in the treaty of Versailles, which was made a part of the Berlin Treaty, provision was made that Germany should not only be responsible for the claims against Germany but for Austria, Hungary and all other allies of Germany during the war; is that your recollection, Mr. Secretary?

Secretary KELLOGG. I could not tell you definitely without looking at the Treaty.

Senator JONES of New Mexico. Has anything been done with respect to American claims against any of the allies of Germany, other than Austria and Hungary?

Secretary KELLOGG. I do not know whether there are any claims against any other countries.

Senator JONES of New Mexico. Then it would follow that so far as you know nothing has been done in regard to any such claims.

The CHAIRMAN. It would not act until after the time limit for the filing of claims against Austria and Hungary. And the only other government would be the Turkish Government and Bulgaria, I believe.

Secretary KELLOGG. I never heard of any claims against Bulgaria, and do not know whether there are any or not. We never declared war on Turkey, I might remind you, also.

Senator JONES of New Mexico. It is true that we never declared war on Turkey, but the Berlin treaty provided that Germany should be responsible for the claims of American nationals against all of the German allies, which would include Austria, Hungary, and Bulgaria, and Turkey, I believe, which were the German allies in the war. What I should like to know is whether there are any such claims, and what, if any, steps have been taken looking toward a liquidation of such claims.

Secretary KELLOGG. I do not know of any claims against those countries, or any steps that have been taken. I have never looked into it, but it has not been called to my attention.

Senator JONES of New Mexico. I should like to make request, Mr. Secretary, that an examination be made of the files in the State Department so that we may know whether or not there are any such claims, and what, if anything, has been done with respect to them.

Secretary KELLOGG. All right.

(See p. —.)

Senator EDGE. It would seem to me rather difficult to include in the bill under consideration, H. R. 15009, any claims against Austria and Hungary, or any other Government because of the method of securing assets therefor to pay German claims. That is, German property and reparations from Germany, and differentiating between the 2 $\frac{1}{4}$ per cent being paid on this account, and money being paid direct for Army occupation, all of which forms a part of the debit and credit in this bill. If we should introduce any other country into the bill it would seem to me to greatly disturb the scheme for payment.

Senator JONES of New Mexico. Does that fact disturb the Senator from New Jersey?

Senator EDGE. It is not a question of disturbing the Senator from New Jersey, but it is a question of trying to consider the bill now before this committee in an orderly manner.

Senator JONES of New Mexico. As I take it, we are dealing with this whole question of what shall be done with German property, and Germany has agreed with the United States that this property may be held until a decision is made, not only as to claims against Germany, but against Austria, Hungary, and all other countries allied with Germany during the war.

Senator EDGE. I thoroughly understand that, but I understand the Senator is leading up to the point of possible claimants against Austria-Hungary, and I do not see how it could be included in this bill unless there be a separate bill.

Senator JONES of New Mexico. Well, if we are going to return all of this German property without taking into cognizance the claims which we have against Austria-Hungary, then are we not surrendering a right which we obtained under the treaty of Berlin?

Senator EDGE. That might be true, but it would seem to me that the two would have to be handled in a separate way, even though we were holding this security.

Senator BAYARD. Yes, but in this bill in the "Declaration of policy" it says, "In pursuance of established American doctrine." Are you not going to carry through this doctrine in regard to the settlement of all the claims against these countries?

Senator EDGE. Exactly, but you can not do everything at one time.

The CHAIRMAN. By the mere fact of the passage of this bill you can not relieve Germany.

Senator EDGE. No.

Senator JONES of New Mexico. And that is one point in connection with this bill, inasmuch as this bill makes not provisions whatever for the payment of the claims of Americans against Austria, Hungary, Bulgaria, or Turkey, and surrenders all of the German property, we surrender every means provided in the Treaty of Berlin for the payment of any such claims.

Senator EDGE. I do not understand that.

Senator REED of Pennsylvania. Could we not take that question up with the Treasury Department, which ought to be able to give us more specific information about it?

Senator EDGE. I would like to have that cleared up, too, because I do not understand that we surrender all of this property.

Senator JONES of New Mexico. Oh, absolutely. Something new has been injected into the situation here. I have always understood that the State Department dealt with foreign countries and dealt with the question of reparations and so on, but we find in this particular case that it is the Treasury Department that is dealing with this subject.

Senator REED of Pennsylvania. Well, that is our fault. We took the conduct of the alien property proceedings out of the hands of the State Department or the War Department. We put it in a separate, independent bureau, and then we made that bureau lean all over the Treasury Department in order to finance itself.

Senator JONES of New Mexico. Under what law?

Senator REED of Pennsylvania. We required a bureau, the Alien Property Custodian, to deposit all his receipts in the Treasury and required the Treasury to continue special funds for it.

The CHAIRMAN. And make the investments of the funds?

Senator REED of Pennsylvania. It is our fault, not the fault of the department.

Secretary KELLOGG. Well now, so far as the State Department is concerned it carries on all the negotiations with foreign countries. The State Department has nothing to do with the administration of the alien property. Congress has the sole power to dispose of that property and to say what shall be done with the property or the proceeds. This bill is not a bill prepared by the State Department. I never saw it until it came from the House of Representatives. The State Department has nothing whatever to do with the bill.

Senator JONES of New Mexico. I observe in your letter of April 3, 1926, addressed to Mr. Green, chairman of the Ways and Means

Committee of the House, and most of which appears on page 2 of the hearings, the statement:

The bill has been prepared by the Treasury Department, and during its preparation this department furnished the Treasury Department informally with certain facts bearing on the situation, and also brought certain considerations to the attention of that department.

Secretary KELLOGG. That was not this bill at all, Senator. Pardon me.

Senator JONES of New Mexico (continuing) :

It assumes that the Treasury and the legislative counsel of the House, who collaborated in the drafting of the bill, gave due consideration to the data submitted by the department, and that the present draft represents the considered judgment of those responsible for the preparation and introduction of the bill. In these circumstances and since this department does not feel that it can assume any responsibility for the form of the present draft, its legal sufficiency or the policy laid down therein, I prefer to make no comment on the bill now under consideration.

That letter, of course, related to the so-called Mills bill, which was under consideration by the House Ways and Means Committee last spring.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. I will ask you now if your connection with the present bill is the same as that with respect to the Mills bill?

Secretary KELLOGG. I had no connection whatever with the present bill. Before the present bill was framed the House committee, either by vote or informally, I do not know which, asked for the correspondence. I sent them all the correspondence, except certain correspondence with relation to the alien property between the German Government and the United States, and that correspondence I subsequently sent to the Senate when I got the consent of the German Government, and they are both before you.

Senator JONES of New Mexico. That appears in Document 173.

Secretary KELLOGG. Document 173; yes, sir, that is correct. I had nothing to do with the framing of the bill or making suggestions about it at all.

Senator JONES of New Mexico. Has there been correspondence with the State Department by American nationals protesting against the six months period of limitation fixed in the agreement between the State Department and the German representatives, known as the Mixed Claims Commission agreement?

Secretary KELLOGG. I could not tell you without an examination.

Senator JONES of New Mexico. I wish you would have an examination made of the correspondence of the State Department with American nationals relating to their claims which are now barred by the limitations fixed in the Mixed Claims Commission agreement and let us have a summary at least of such correspondence.

(See p. —.)

Senator WATSON. Is it set forth specifically in the Berlin treaty?

Senator JONES of New Mexico. How?

Senator WATSON. Is it set forth specifically that the claims of our nationals all be settled by this treaty and that thereafter there is no recourse?

Senator JONES of New Mexico. There is no such provision as that in the Berlin treaty. The only period of limitations ever fixed at all was in the agreement between the State Department and the representatives of the German Government which preceded the Mixed Claims Commission, and I am not sure that it was contained in that agreement as to the commission, but was a period agreed upon in notes between the State Department and the representatives of the German Government. There was no authority of law for any such limitation.

Secretary KELLOGG. I think that was fixed by a note sent by Mr. Houghton by direction of Mr. Hughes in 1922. It appears in your records.

Senator WATSON. Does anybody know how many claims were not filed within the fixed limitation?

Senator JONES of New Mexico. That is what I am asking him to give us, if he has the correspondence in the State Department with such claimants.

Senator WATSON. Well, does the Senator think that even though they be consequential that that limitation could be extended in any way? Would there not be recourse against the German Government?

Senator JONES of New Mexico. Well, I am trying to develop the facts here as to what has been done, and later on that will be undoubtedly a subject for discussion and consideration.

Senator SHORTRIDGE. I have been told, Senator, that there were claims amounting to several millions of dollars formally filed or presented to the commission that the commission held they could not consider because not filed in time.

Senator WATSON. Without passing on the merits.

Senator SHORTRIDGE. No; could not consider them.

Senator WATSON. Yes.

Senator SHORTRIDGE. And in a sense, rejected.

Senator WATSON. But there is nothing in the treaty itself that precludes the possibility of recovery against Germany if Germany were willing to pay the claim, that is to say, this treaty does not provide that all of these claims that ever are to be paid shall be paid out of these proceeds.

Senator JONES of New Mexico. That, I take it, is the effect of the correspondence between the State Department and the German Government, and at this point I think it would be well to insert in our record this agreement for the creation of this Mixed Claims Commission and the correspondence in reference thereto, as appears in this document Treaty Series, No. 665.

(The documents referred to contained in Treaty Series, No. 665, are here printed in the record in full, as follows:)

AGREEMENT BETWEEN THE UNITED STATES AND GERMANY

FOR A MIXED COMMISSION TO DETERMINE THE AMOUNT TO BE PAID BY GERMANY IN
SATISFACTION OF GERMANY'S FINANCIAL OBLIGATIONS UNDER THE TREATY CON-
CLUDED BETWEEN THE TWO GOVERNMENTS ON AUGUST 26, 1921

Signed August 10, 1922

Agreement: The United States of America and Germany, being desirous of determining the amount to be paid by Germany in satisfaction of Germany's financial obligations under the treaty concluded by the two Governments on

August 25, 1921, which secures to the United States and its nationals rights specified under a resolution of the Congress of the United States of July 2, 1921, including rights under the Treaty of Versailles, have resolved to submit the questions for decision to a mixed commission and have appointed as their plenipotentiaries for the purpose of concluding the following agreement:

The President of the United States of America, Alanson B. Houghton, ambassador extraordinary and plenipotentiary of the United States of America to Germany, and the President of the German Empire, Doctor Wirth, Chancellor of the German Empire, who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

The commission shall pass upon the following categories of claims which are more particularly defined in the treaty of August 25, 1921, and in the treaty of Versailles:

(1) Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights, and interests, including any company or association in which they are interested, within German territory as it existed on August 1, 1914;

(2) 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, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

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

ARTICLE II

The Government of the United States and the Government of Germany shall each appoint one commissioner. The two Governments shall by agreement select an umpire to decide upon any cases concerning which the commissioners may disagree, or upon any points of difference that may arise in the course of their proceedings. Should the umpire or any of the commissioners die or retire, or be unable for any reason to discharge his functions, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

ARTICLE III

The commissioners shall meet at Washington within two months after the coming into force of the present agreement. They may fix the time and the place of their subsequent meetings according to convenience.

ARTICLE IV

The commissioners shall keep an accurate record of the questions and cases submitted and correct minutes of their proceedings. To this end each of the Governments may appoint a secretary, and these secretaries shall act together as joint secretaries of the commission and shall be subject to its direction.

The commission may also appoint and employ any other necessary officer or officers to assist in the performance of its duties. The compensation to be paid to any such officer or officers shall be subject to the approval of the two Governments.

ARTICLE V

Each Government shall pay its own expenses, including compensation of its own commissioner, agent, or counsel. All other expenses which by their nature are a charge on both Governments, including the honorarium of the umpire, shall be borne by the two Governments in equal moieties.

ARTICLE VI

The two Governments may designate agents and counsel, who may present oral or written arguments to the commission.

The commission shall receive and consider all written statements or documents which may be presented to it by or on behalf of the respective Governments in support of or in answer to any claim.

The decisions of the commission and those of the umpire (in case there may be any) shall be accepted as final and binding upon the two governments.

ARTICLE VII

The present agreement shall come into force on the date of its signature.

In faith whereof the above-named plenipotentiaries have signed the present agreement and have hereunto affixed their seals.

Done in duplicate at Berlin this 10th day of August, 1922.

[SEAL]

ALANSON B. HOUGHTON.

[SEAL]

WIRTH.

[Exchange of notes]

The German Chancellor to the American Ambassador at Berlin

[Translation]

No. III A 2451.

FOREIGN OFFICE,
Berlin, August 10, 1922.

Mr. AMBASSADOR: In reply to your kind note of June 23, 1922, I have the honor to state to your excellency as follows:

The German Government is in agreement with the draft of an agreement communicated to it in the note mentioned, now that some changes in the text have been agreed upon with your excellency. I have the honor to transmit herewith the draft modified accordingly.

From the numerous conferences which have taken place with your excellency, the German Government believes itself justified in assuming that it is not the intention of the American Government to insist in the proceedings of the commission upon all the claims contemplated in the Versailles treaty without exception, that it in particular does not intend to raise claims such as those included in paragraphs 5 to 7, annex 1, of article 244 of the Versailles treaty (claims for reimbursement of military pensions paid by the American Government, and of allowances paid to American prisoners of war or their families and to the families of persons mobilized), or indeed claims going beyond the treaty of August 21, 1921.

The German Government would be grateful if your excellency would confirm the correctness of this assumption.

In the view of the German Government it would furthermore be in the interest of both Governments concerned that the work of the commission be carried out as quickly as possible. In order to insure this it might be expedient to fix a period for the reporting of the claims to be considered by the commission. The German Government, therefore, proposes that the commission should consider only such claims as are brought before it within at least six months after its first meeting as provided in Article III of the above-named agreement.

I should be obliged to your excellency for a statement as to whether the American Government is in agreement herewith.

At the same time I take advantage of this occasion to renew to you, Mr. Ambassador, the assurance of my most distinguished consideration.

WIRTH.

The American Ambassador at Berlin to the German Chancellor

No. 128.

AMERICAN EMBASSY,
Berlin, August 10, 1922.

Mr. CHANCELLOR: I have the honor to acknowledge the receipt of your note of to-day's date transmitting the draft of the agreement inclosed to you in my note of June 23, as modified as a result of the negotiations that have been carried on between us.

In accordance with the instructions that I have received from my Government, I am authorized by the President to state that he has no intention of pressing against Germany or of presenting to the commission established under the claims agreement any claims not covered by the treaty of August 25, 1921, or any claims falling within paragraphs 5 to 7, inclusive, of the annex following article 244 of the treaty of Versailles.

With regard to your suggestion that the commission shall only consider such claims as are presented to it within six months after its first meeting, as provided for in Article III, I have the honor to inform you that I am now in receipt of instructions from my Government to the effect that it agrees that notices of all claims to be presented to the commission must be filed within the period of six months as above stated.

I avail myself once more of the opportunity to renew to you, Mr. Chancellor, the assurances of my most distinguished consideration.

A. B. HOUGHTON.

Doctor WIRTH,
Chancellor of the German Empire, Berlin.

Senator WATSON. Senator, if it will not interrupt you; is this 20 per cent that we are retaining for the purpose of liquidating these American claims sufficient to cover these claims that have not been included?

Senator JONES of New Mexico. By no means. And it is all intended to be used in the payment of the claims which have already been allowed by the Mixed Claims Commission.

Senator SHORRIDGE. Does that correspondence fix the time, Senator?

Senator JONES of New Mexico. This correspondence fixes the time, and says that "all claims to be presented to the commission must be filed within the period of six months as above stated." That is after the first meeting, I believe, of the Mixed Claims Commission.

The CHAIRMAN. I think you will find the great bulk of the claims filed since are for loss of marks purchased by American citizens, investments that were made over there and the loss on those investments.

Senator JONES of New Mexico. May I ask for further information? I do not observe in these notes the agreement that the claims of Americans which would be made in German marks should be settled on the basis of 16 cents for a mark. Where is the note or correspondence which fixed that provision? As I understand such a provision was agreed on.

Secretary KELLOGG. The State Department have no correspondence on that subject. Whatever was done about that was done by the Mixed Claims Commission. You will have to ask them for that. I can probably get the information from them for you. But I have not had any correspondence on the subject at all. I am informed that that pertains to certain bank deposits principally. I can not state positively, Senator.

Senator JONES of New Mexico. I would like to get into the record at this point, if I may, some statement as to who did that, and what it amounted to. I have had considerable correspondence bearing upon that subject.

Senator EDGE. Has the Senator completed that statement?

Senator JONES of New Mexico. Yes.

Senator EDGE. Recurring to the point I drew attention to a few moments ago as to the retention of German property, if this bill became a law, as I understand, it will be retaining a sum equal to 20 per cent of all the German property for a period of approximately 24 years; is that not correct?

Senator JONES of New Mexico. Not at all, as I understand it, Senator. It is applied at once. That is applied at once to the payment of claims allowed by the Mixed Claims Commission, and the

Senator will observe that if he will scrutinize carefully the report of the Ways and Means Committee of the House.

Senator EDGE. Well, I am reading from the report of the Ways and Means Committee of the House, Report No. 1623, if I may finish my sentence.

Senator JONES of New Mexico. If you will look into the tabulation on the last page—

Senator EDGE. I am reading from the tabulation on the last page.

Senator JONES of New Mexico (continuing). You will find that \$104,000,000, which is applied to the payment of these American claims, is made up of \$40,000,000, which is assumed to be 20 per cent of the value of the German property.

Senator EDGE. The statement I make, if I may complete my sentence, and which I think is correct, is that the Germans do not get back all of their property within a period of 24 years, at least not before that, and I am trying to make it clear by reading from the last page of Report No. 1623:

Total time required (approximate)—

	Years
To pay off 2½ per cent priority mixed claims, together with interest thereon and interest on deferred amounts-----	6
To pay off principal of \$124,330,000 with interest-----	18
To pay off \$25,000,000 unallocated interest fund, without interest-----	2½

That would not enter into it, as I understand it. But that provides a period of 24 years during which time, if I correctly understand the report and the terms of the bill, we are holding approximately 20 per cent of the German property. So that in speaking of the claims against Austria and Hungary or Turkey we certainly have that credit within the control of the Government of the United States. I simply wanted to make the point plain that I made.

Senator JONES of New Mexico. Let me make this suggestion: If the Senator will examine carefully the report of the House committee he will observe that the 20 per cent of alien property is to be applied at once to the payment of American nationals, and that the German claimants themselves are supposed to get a return of that amount for themselves out of the 2½ per cent of the Dawes plan, and in that way there is appropriated out of the 2½ per cent of the Dawes plan an amount which will go to the German owners of property equal to their 20 per cent in 24 years.

Senator EDGE. In a period of 24 years.

Senator JONES of New Mexico. Yes; or thereabouts.

Senator EDGE. Yes.

Senator JONES of New Mexico. But the Government of the United States does not retain that 20 per cent in the meantime. It is paid to American claimants, and could not in any sense be considered as security for any claims against Austria-Hungary, or any claims of American nationals who have not had an opportunity to present their claims to the Mixed Claims Commission.

Senator EDGE. I do not entirely agree with the Senator's interpretation. Whether we defer payments to the Germans for 24 years or handle it the other way, we still have that credit.

Senator JONES of New Mexico. No; by this bill it is appropriated to the German claims and is not retained by the United States.

Senator REED of Pennsylvania. Mr. Chairman, if I may interrupt there. I do not believe I can quite agree with Senator Edge.

The CHAIRMAN. I can not either.

Senator REED of Pennsylvania. That the certificates of investment in this special deposit fund which are issued to German nationals are in any sense collateral for the payment of our claims against Austria.

Senator EDGE. Perhaps not.

Senator REED of Pennsylvania. But I can not agree either with Senator Jones that there is anything in the Berlin treaty which enables us under a fair construction of the language of that treaty to hold German property to secure the payment of claims against Austria, because the only reference to that right which is contained in the Berlin treaty comes from section 5 of the Knox-Porter resolution, and that requires that we shall hold the property of Germans and Austrians until their Governments shall, respectively, have arranged for the payment of debts due to American nationals. Now, I think the use of the word "respectively" clearly indicated that each body of property was to be held as security for the respective group of claims.

Senator SHORTRIDGE. You are reading from the treaty itself?

Senator REED of Pennsylvania. Yes; from the treaty of Berlin.

Senator SHORTRIDGE. Precisely.

Senator REED of Pennsylvania. And I do not believe that on a fair construction of that treaty we have any right to hold German property to secure Austrian claims, or vice versa. I think the use of the word "respectively" which occurs several times in that long paragraph makes it clear that there was no such right. I inject this, Senator, only that we may not seem to acquiesce in the theory as you stated.

Senator SHORTRIDGE. I am very glad that you did call attention to the language of the treaty itself rather than our recollection of it.

Senator JONES of New Mexico. And at this point in order to clarify the discussion I think it advisable to insert into the record at this point section 5 of the Berlin treaty, and I call attention to the language bearing upon this point.

Senator SHORTRIDGE. Was it otherwise referred to in the treaty? Is the subject matter which we have in mind otherwise or elsewhere referred to in the treaty, or is it all within the section named?

Senator JONES of New Mexico. No; all within the section named. And I do not think it will be necessary for me to comment on it any further at this time.

Senator WATSON. Well, it is to be inserted in the record.

Senator JONES of New Mexico. It is to be inserted in the record at this point.

Senator WATSON. Yes.

(Section 5 of the Knox-Porter resolution, contained in Treaty Series No. 658 is here printed in the record in full, as follows:)

SEC. 5. All property of the Imperial German Government, or its successor or successors, and of all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, and all property of the Imperial and Royal Austro-Hungarian Government, or its successor or successors, and of all Austro-Hungarian nationals which was on December 7, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States

of America or any of its officers, agents, or employees, from any source or by any agent whatsoever, 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 and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Governments respectively, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or of any operations of war, or otherwise, and also shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce, and industrial property rights, and until the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals or the Imperial and Royal Austro-Hungarian Government or Austro-Hungarian nationals, and shall have waived any and all pecuniary claims against the United States of America.

Senator WATSON. Senator Jones, I am informed that Mr. Bonynge in his testimony before the House committee stated that all of the claims that the commission would have had the right to consider or would have had jurisdiction over amounted to \$3,700,000, and that the great sum of claims over and above \$3,700,000 they could not have considered because of the want of jurisdiction owing to the nature of the claims and not because of the limitation of time. That is to say, for the depreciation of crowns, I think. He mentioned three or four of those items here. That is Mr. Bonynge's testimony before the House committee.

Senator JONES of New Mexico. That is his construction of the agreement creating the Mixed Claims Commission.

Senator WATSON. Yes.

Senator JONES of New Mexico. And which defines in certain respects the jurisdiction of the commission.

Senator WATSON. Yes; that is his construction.

Senator JONES of New Mexico. And I think that may be true, but the point for this committee to consider, it seems to me, is a broader question than that, because the Mixed Claims Commission was not a creature of Congress, but was created between the State Department and the Foreign Department of the German Government, and its limitations fixed by that correspondence and agreement and not by any act of Congress. That Claims Commission had no jurisdiction of Austria's and Hungary's claims. And I may finally reach the conclusion that the decision of the Mixed Claims Commission as to its own jurisdiction is within the agreement made between the State Department and the German Foreign Office, but I do not think that that relieves this committee from examining the question as an original question.

Senator WATSON. Did this commission ever decide squarely that they had no jurisdiction over the Austrian claims?

Senator JONES of New Mexico. I doubt if that question was ever put up to it, because the agreement creating the commission made reference only to claims against Germany.

Senator WATSON. Yes.

Secretary KELLOGG. I think you will find the position that I took as to the right to hold German alien property as security for claims against Austria-Hungary is stated in my note to the effect that the United States has a right to hold that property as security for both the German claims and the claims against Austria and Hungary. And if the Governments respectively should pay these claims then of course the property could be released. But you have a right to hold it.

Now does the committee want anything more of me? I have very important engagements at 12 o'clock.

Senator JONES of New Mexico. I just wish to add that I think the Secretary has clearly stated the views which I entertain with respect to the right of the United States Government under the Berlin treaty to hold that property for the payment of claims, as stated by the Secretary.

Secretary KELLOGG. There was one other thing that Senator Jones asked. I have not had a chance to personally examine it. But to give a list of cases where the President, without the ratification by the Senate, had entered into claims agreements of protocols settling claims, by United States citizens or the United States against foreign countries. And I have had prepared and will complete the examination if this committee desires, a memorandum here which I will simply leave with the reporter to insert in the record. I can not discuss it because I have not looked into it. I understand a different rule in some cases exists where, of course, the claim is against the United States, because there you would have to have an appropriation by Congress to pay it.

(The memorandum presented by Secretary Kellogg for the record is here printed in full, as follows:)

DEPARTMENT OF STATE, January 10, 1927.

The SECRETARY:

The Government of the United States does not seem to have followed a consistent procedure for the settlement of claims against foreign governments. In some cases claims conventions have been submitted to the Senate for advice and consent. In other cases such agreements have not been submitted to the Senate. An examination of Malloy's "Treaties, Conventions, International Acts, Protocols, and Agreements between the United States and Other Powers" and of Moore's "International Arbitrations" indicates that the advice and consent of the Senate has not been requested in the following cases:

Protocol between the United States and Venezuela, May 1, 1852. (Malloy, p. 1842.)

Protocol between the United States and Brazil of March 14, 1870. (Moore, pp. 1733 to 1747.)

Agreement between the United States and Spain of February 11-12, 1871. (Malloy, pp. 1661 to 1664.)

Convention between the United States and Colombia of August 17, 1874. (Moore, p. 1443.)

Agreement between the United States and Spain of February 27, 1875. (Malloy, p. 1664.)

Protocols between the United States and Haiti of May 28, 1884, and March 20, 1885. (Malloy, pp. 932 to 935.)

Protocol between the United States and Haiti of May 24, 1888. (Malloy, p. 935.)

- Protocol between United States, Great Britain, and Portugal of June 13, 1891. (Malloy, p. 1460.)
- Protocol between the United States and Mexico of March 2, 1897. (Malloy, p. 1180.)
- Protocol between the United States and Chile of May 24, 1897. (Malloy, p. 190.)
- Protocol between the United States and Peru of May 17, 1898. (Malloy, p. 1443.)
- Protocols between the United States and Haiti of October 18, 1899, and June 30, 1900. (Malloy, pp. 938 to 939.)
- Protocol between the United States and Guatemala of February 23, 1900. (Malloy, p. 871.)
- Protocol between the United States and Nicaragua of March 22, 1900. (Malloy, p. 1290.)
- Protocol between the United States and Russia of August 26 (September 8), 1900. (Malloy, p. 1532.)
- Protocol between the United States and Salvador of December 19, 1901. (Malloy, p. 1568.)
- Protocol to which the United States was a party at the conclusion of the so-called Boxer troubles, September 7, 1901. (Malloy, p. 2006.)
- Protocol between the United States and Mexico of May 22, 1902. (Malloy, p. 1194.)
- Protocol between the United States and Brazil of September 6, 1902. (Malloy, p. 152.)
- Protocol between the United States and the Dominican Republic of January 31, 1903. (Malloy, p. 414.)
- Protocol between the United States and Venezuela of February 17, 1903. (Malloy, p. 1870.)
- Protocol between the United States and Venezuela of February 13, 1909. (Malloy, p. 1881.)
- Protocol between the United States and Venezuela of August 21, 1909. (Malloy, p. 1887.)
- Protocol and exchange of notes between the United States and Venezuela of September 9, 1909. (Malloy, p. 1889.)

In addition to the foregoing cases there are, of course, many individual claims which have been presented and settled through diplomatic channels by the Department of State.

Secretary KELLOGG. Now, if there is any further information with relation to that that the committee wants I will be glad to give it. At present, if the committee will excuse me, I would very much like to go, because I have very important engagements this morning.

The CHAIRMAN. If there are no further questions the Secretary may go.

Senator JONES of New Mexico. I observe this statement which the Secretary has just offered for insertion in the record contains a number of cases in which the agreements between the United States and other powers have been entered into with respect to the settlement of claims by American nationals and these other countries without the concurrence of the United States Senate.

Secretary KELLOGG. Yes.

Senator JONES of New Mexico. I would like for him to have some one in the department make up a list of such actions by the Government wherein the concurrence of the Senate was had.

Secretary KELLOGG. I will have that done. You asked the other day for these cases, so I had these prepared.

(See p. —.)

Senator JONES of New Mexico. Yes. Thank you for them.

Secretary KELLOGG. Of course, naturally, if a claim is settled against the American Government there would have to be an appropriation by Congress to pay it.

The CHAIRMAN. Thank you for coming here, Mr. Secretary. Now we will hear Mr. Winston.

STATEMENT OF HON. GARRARD B. WINSTON, UNDERSECRETARY (IN CHARGE OF FISCAL OFFICES), DEPARTMENT OF THE TREASURY

The CHAIRMAN. If you have any particular statement to make in relation to this bill as affecting the Treasury Department or the attitude of the Treasury Department in relation to it I would like to have you do so now.

Undersecretary WINSTON. I would like to make some comments on this if I may. We are up against a purely practical situation. It is all very well to talk about what is the ideal thing, but what Congress has to decide is what is the practical thing.

Senator JONES of New Mexico. Well, now, Mr. Winston, you say that we are up against an impossible situation.

Undersecretary WINSTON. Well, I mean this country. Not impossible, sir.

Senator JONES of New Mexico. Well, a confusing situation, or whatever word you used.

Undersecretary WINSTON. Yes.

Senator JONES of New Mexico. I would like to know whom you include in that expression "We."

Undersecretary WINSTON. Well, I was referring to Congress, to the administration, to the American claimants, the German property owners, and the German shipowners. All of the people who are involved in this question.

Senator JONES of New Mexico. Well, I would like to know for whom he is talking here.

Undersecretary WINSTON. I asked permission to make comments on this problem, and this is the expression of my opinion.

Senator SHORTRIDGE. The chairman invited him to make some comments.

Senator JONES of New Mexico. Well, of course, I have no objection to that, and, if you prefer, I am willing that you should go ahead with your statement and then I will interrogate you afterwards.

Senator KING. Of course, I might suggest that we might want to have other men come and make their comments who have entirely different views, and have views maybe of as great importance to the committee as Mr. Winston's.

Senator REED of Pennsylvania. And when they come let us hear them and not start to cross-examine them before they finish their first sentence.

Undersecretary WINSTON. Germany lost the war, and she entered into the Versailles treaty and agreed to pay reparations to the Allies. Those reparations were fixed at 132,000,000,000 gold marks, plus some other charges, and they did not include any part of the United States claims. The reparations fixed carried interest at 5 per cent. That is about \$33,000,000,000 principal, and 5 per cent interest on that is \$1,650,000,000 a year.

Germany was not able to pay these reparations. In effect, the country went into the hands of a receiver. The Dawes committee was constituted to determine how much Germany could pay. After investigation, they decided that the total of Germany's capacity to pay after five preliminary years was 2,500,000,000 gold marks, or about \$625,000,000 a year.

Just compare that capacity to pay with the total of the reparations fixed under the Versailles treaty, and also with even the annual interest under the Versailles treaty, and you will see that while these reparations on paper are obligations of Germany, they are beyond Germany's capacity to pay. It is only a theoretical discussion when you consider these figures.

When we became a party to the division of the Dawes plan an allowance was made of $2\frac{1}{4}$ per cent on account of the American claims against Germany. Two and one-fourth per cent would pay the American claims, including the United States Government claims with interest, in about 80 years. The Berlin treaty provided that we should hold the property of German nationals, which we had taken, until a suitable provision was made for the payment of the American claims. It should be noted here that the right to hold that property exists until a suitable provision is made for payment of the private American claims, and not for payment of the claims of the United States Government against Germany.

So we then have a provision on Germany's part to pay off these claims in 80 years, and for us to return the security after 80 years. To keep this property for that length of time in the hands of a public trustee is in effect confiscation. So some plan had to be arranged whereby the American claimants could get a reasonable payment on their claims and the German property could be returned within a reasonable period. There had to be sacrifices on both sides. Theoretically the American claimants had the right to retain this property. Or, rather, that the Government should retain the property for the American claimants until the claims were fully satisfied. But, as I say, to do so amounts to confiscation.

There is no way of getting more money out of Germany than this $2\frac{1}{4}$ per cent. So we came to a situation, when you consider the problem as a whole, of trying to work out something which would clear up these questions.

The original plan of the Treasury was for the United States to return the German property, to pay for the ships and radio stations, to pay the American claimants and to be reimbursed out of the reparations and Army costs coming from Germany. That plan was not acceptable to Congress. A new plan was proposed as a compromise. The bulk of the German property is returned immediately and 20 per cent retained to be paid out of reparations. Fifty per cent of the ship claims is paid in cash, 50 per cent on time out of the reparations. The bill takes what would otherwise pay for the balance of the ship claims and gives that to the American claimants. The bill gives to the American claimants the payments on reparations which have already come in, and then gives to the American claimants 20 per cent of the property retained. In order that there should be an equality between the three classes there is provided a priority on the payment of the American claims.

up to 80 per cent, and then after that the three classes, the American claimants, the alien property owners, and the German ships share alike.

The CHAIRMAN. That is, all over \$100,000.

Undersecretary WINSTON. That is after the smaller ones are paid.

Senator REED of Pennsylvania. At that point, Mr. Winston, it might be well to make clear that all the death and personal injury claims are paid in full at once.

Undersecretary WINSTON. And all the claims up to \$100,000.

Senator REED of Pennsylvania. And all the claims under \$100,000, and \$100,000 on each of the large claims.

The CHAIRMAN. Yes.

Undersecretary WINSTON. I just want to speak of the point which has been raised on the short limitation for the presentation of the American claims. The Berlin treaty provided for the payment of these American claimants. The State Department provided the machinery for ascertaining the amount of the claims, and, as is usual in those cases, a period of limitations was set within which claims should be presented.

Senator MCLEAN. Was it six months?

Undersecretary WINSTON. I believe it was six months after a certain date.

Senator MCLEAN. Yes.

Undersecretary WINSTON. The Mixed Claims Commission took the position that if a claim was not presented in time it did not come within their jurisdiction and they could not enter an award against Germany. Now, Germany has agreed to pay only the awards entered by the Mixed Claims Commission. If you should extend the period of limitations and ask the commission to enter new awards they would not be such awards as Germany is obligated to pay.

Senator REED of Pennsylvania. Obligated under the mixed claims agreement or under the treaty?

Undersecretary WINSTON. Under the treaty, in which it agrees to pay the awards, and the mixed claims agreement which provides the machinery, including the statute of limitations.

Senator KING. Is the statute of limitations fixed in that agreement?

Undersecretary WINSTON. It is fixed in correspondence in connection with it.

Senator SHORTRIDGE. Pardon me. The treaty provided for the setting up of the commission, did it not?

Undersecretary WINSTON. No; the treaty provided, as I recall, simply that Germany would pay these claims.

Senator SHORTRIDGE. No; but there was some provision for the setting up of a commission to pass upon claims, was there not?

Undersecretary WINSTON. No.

Senator REED of Pennsylvania. Not in the treaty.

Senator KING. No.

Senator SHORTRIDGE. How did it come about, just for my own immediate information?

Undersecretary WINSTON. Well, when a man agrees to pay a claim which is unascertained, the first thing you have to do is to set up some machinery to ascertain the amount of the claim.

Senator SHORTRIDGE. Yes.

Undersecretary WINSTON. That was done by the State Department.

Senator SHORTRIDGE. Who set up the commission then?

Undersecretary WINSTON. The State Department and the German Government.

Senator SHORTRIDGE. Well, was the commission given the authority to fix the time? That is the only point in my mind for the moment. Was the commission given the authority?

Senator JONES of New Mexico. There has never been any act of Congress authorizing the creation of the Mixed Claims Commission or defining its jurisdiction.

Senator KING. Or the time within which payment should be made.

Senator HARRISON. Will you not for the benefit of the committee put the personnel of that Mixed Claims Commission in the record?

Undersecretary WINSTON. I will put it in.

Chandler P. Anderson is the American commissioner, Doctor Kiesselbach is the German commissioner, and Edwin B. Parker is the umpire.

The CHAIRMAN. The time is fixed six months after the first meeting of the commission, and that was agreed to by notes passing between the American State Department and the German State Department.

Senator SHORTRIDGE. Well, then, it was the two Governments that fixed the statute rather than the members of the commission?

Undersecretary WINSTON. Yes; it was fixed by the State Departments.

The CHAIRMAN. By the two Governments?

Senator McLEAN. And there were claims that were valid and just that were not presented to the commission, were there not?

Undersecretary WINSTON. Yes; just as happens in any kind of a law, that the limitation runs on some people.

With reference to the Austrian and Hungarian claims, we hold, as was stated, an estimated amount of \$12,000,000 of Austrian property. As I say, the time for the filing of claims has not yet expired, and I have seen no authoritative estimate on the amount of the American claims. I have been told by the Austrian minister that these claims will not aggregate over two to four million dollars.

As far as the Hungarian claims are concerned, the Hungarian minister said to me just informally—I imagine he advised the State Department to the same effect—that Hungary did not wish to be included in any bill until the amount of the claims could be estimated and some provision made for their payment.

In the German case we have the arrangement of the Dawes plan of 2 1/4 per cent reparations to take care of these claims. We also have the time limitation for the presentation of claims past and an accurate estimate of the amount of claims. It was felt that you could now draw a bill to cover the German claims, but you could not very well draw a bill to cover the Austrian or Hungarian claims, and that was the reason why those claims were not considered in the draft of this bill.

The CHAIRMAN. Well, we hold three or four times the amount of Austrian property to cover any claims that the American nationals have against that country?

Undersecretary WINSTON. Well, Senator Smoot, I say I have no authoritative estimate as to the amount of those claims.

The CHAIRMAN. Well, all the information that we have and all the information that has been collected supports that position.

Undersecretary WINSTON. The aggregate of the American claims may be much larger because of the speculation in crowns, just like the speculation in marks.

Senator WATSON. Did Germany agree to pay those claims, Mr. Winston?

Undersecretary WINSTON. No.

The CHAIRMAN. Well, you do not think that Congress ever intends to take care of all those who invested in German marks or Austrian crowns?

Undersecretary WINSTON. No; I hope not.

Senator WATSON. Mr. Winston, did Germany agree to pay the claims of her allies as well as her own?

Undersecretary WINSTON. Well, I think there is something of that sort in the Versailles treaty.

Senator WATSON. Yes.

Undersecretary WINSTON. But, as Senator Reed said, the Berlin treaty apparently contemplates a respective provision for each of these nations for the payments.

Senator JONES of New Mexico. You have just heard the statement of the Secretary of State in that regard. Do you agree with the Secretary of State?

Undersecretary WINTON. Well, I will just have to leave it to the Berlin treaty.

There was one question raised by the Secretary of State in the last hearing, as I understand, which was this: In negotiating for the admission of the United States into a share of the Dawes payments our State Department said that if we retain any ships which we have taken we will credit them against the reparations, and they also said if we retain the alien property we will credit it against the reparations. The question is raised as to whether this bill in the form in which it is now presented constitutes a retention of the ships or property so that the Allies could say we are not entitled to any further reparations from Germany.

The way that question appeals to me is this: The two situations—the ships and the alien property. We can not return the ships in kind because some of these ships do not exist. On some of them we spent enormous sums of money, like the *Leviathan*. But we satisfy the requirement if we pay the value of these ships. We are not retaining the ships if we pay their value. There is no requirement that we shall pay their value in cash to-day, and it is the same thing if we pay their value 50 per cent in cash, as the bill provides, and 50 per cent on time with interest, as the bill provides. If the Allies say that that 50 per cent is contingent on reparations, and therefore may not be paid, they can only raise that question when the reparations cease to be paid. And if the reparations cease to be paid there is nothing against which to credit the ships.

Senator EDGE. Or when the reparations exceed the amount could they not raise it then?

Undersecretary WINSTON. No, sir; because then the ships would be paid for.

Now the question with alien property is a good deal the same. We have the right under the Berlin treaty to retain the German property until suitable provision is made for the payment of the American claims. In other words, we could retain 100 per cent.

Senator JONES of New Mexico. Is that all the right we have under the Berlin treaty?

Undersecretary WINSTON. Well, we have at least that right.

Senator JONES of New Mexico. I know, but is that all the right we have under the Berlin treaty?

Undersecretary WINSTON. Under the decision of the Supreme Court it seems to me we have already confiscated that property, that is, that Chemical Foundation case, and could dispose of it as we pleased as confiscated.

Senator JONES of New Mexico. I am speaking now with respect to the provision of the Berlin treaty. I have noticed throughout your statement you refer to the retention of the property as the only recourse we have. I ask you whether I am correct in assuming that that is your position or not?

Undersecretary WINSTON. Well, that is my position under the Berlin treaty alone. Although we did have under the Versailles treaty a greater right, and the Supreme Court has held we have already confiscated the property, and Congress may dispose of it as it sees fit.

Senator JONES of New Mexico. Well, that provision in the Berlin treaty which incorporates into it certain portions of the Versailles treaty—

The CHAIRMAN. It is made a part of the treaty.

Senator JONES of New Mexico (continuing). Made part of the Berlin treaty; is it your position that that is no longer effective?

Undersecretary WINSTON. No; it has been my belief, just as a lawyer, that we can do as we pleased with this property, in spite of the limitation evidently contained in the Berlin treaty that it is simply security.

Senator JONES of New Mexico. Well, then, why did you make the statement, or rather leave the impression upon my mind, that this 2 1/4 per cent under the Dawes reparation was the only means we had for payment of the American claimants?

Undersecretary WINSTON. I did not mean that.

Senator JONES of New Mexico. And that we would have to retain this property as collateral until those payments paid off these claims?

Undersecretary WINSTON. No; I conveyed the wrong idea, then, Senator. I said that is all we can get from Germany.

Senator JONES of New Mexico. Oh, what we get from Germany?

Undersecretary WINSTON. What we get from Germany. This is not Germany's property. This is the property of German nationals. But let me finish that statement on the possible argument that the Allies might claim we are not entitled to any more reparations. We have the right, certainly, under the Berlin treaty, whatever our rights are under the Versailles treaty, to retain this property until the American claims are taken care of.

Senator JONES of New Mexico. Well, have we not a right under the Berlin treaty to liquidate this property and pay American nationals if we want to?

Undersecretary WINSTON. Well, may I finish on this particular phase of it? We have the right under the Berlin treaty, whatever other rights we may have, to retain this property until the American claims are paid. Now if we have a right to retain 100 per cent we have certainly a right to retain 20 per cent of it, which this bill provides we do. So that whereas you can not guarantee anybody against a lawsuit, you can say that as this bill is now framed we certainly ought to win any arbitration that the Allies might raise claiming that we are entitled to no more share of that $2\frac{1}{4}$ per cent.

Senator JONES of New Mexico. Well, now, do you mean to infer that we have no right under the Berlin treaty to now liquidate this property and pay American claimants?

Undersecretary WINSTON. No, sir; but I say we have certainly the right under the Berlin treaty to retain the property.

Senator JONES of New Mexico. Well, have we not clearly the right under the Berlin treaty to liquidate the property and pay American claimants?

Undersecretary WINSTON. Well, that would be my opinion, but I am not so certain of that.

Senator REED of Pennsylvania. Mr. Winston is not answering your question directly. Is not this the situation, that under the Berlin treaty we have got a right to apply this German property to the immediate liquidation of all American claims, but if we do the Allies can then justly claim that the $2\frac{1}{4}$ per cent payments must instantly cease?

Undersecretary WINSTON. That is right.

The CHAIRMAN. And I rather think they would cease under the agreement because it is specifically stated.

Senator REED of Pennsylvania. We all agree that they ought to cease, I think.

The CHAIRMAN. Yes.

Senator REED of Pennsylvania. Now, what we are trying to prevent is a claim by the Allies that those payments ought to cease pro tanto because we are temporarily retaining 20 per cent of the German property, and it was on that that Mr. Winston was speaking. I think, perhaps, he did not catch your point, Senator.

Senator JONES of New Mexico. Well, I did not catch his point either in that way. I was interpreting his statement as meaning that the only chance we had for payment of these claims is through that $2\frac{1}{4}$ per cent, and that we retain this property merely as collateral.

Undersecretary WINSTON. No, that was not my belief, Senator. I was just addressing myself, as Senator Reed suggests, to the question raised by the Secretary of State that the Allies might claim that.

Senator JONES of New Mexico. Well, now, as I understand you, we have a right to retain this property as collateral, and we also have the right to liquidate it and pay American nationals?

Undersecretary WINSTON. I think that is correct.

Senator JONES of New Mexico. And under this bill it is proposed to liquidate this property and return to the German owners or claimants 80 per cent of it.

Undersecretary WINSTON. At once.

Senator JONES of New Mexico. At once; and then later on let them collect out of this 2½ per cent.

Undersecretary WINSTON. Later on we pay them.

Senator JONES of New Mexico. But, in other words, you are going to use 20 per cent of this property for the payment of American nationals, and that much only, notwithstanding the fact that we have just as much right to use the other 80 per cent of property as we have the 20 per cent. And why was the bill framed—I understand you did it—why was it framed so that we would only use 20 per cent of German property for the liquidation of American claimants and turn back to the Germans the other 80 per cent?

Undersecretary WINSTON. This bill, Senator, was framed in the Ways and Means Committee. The bill that I was concerned with was the original Mills bill which provided for the return of all the property at once.

Senator JONES of New Mexico. Yes. Now, it was stated in the House, in the debates certainly, if not in the report, that this bill was framed in the way that it was because of some agreements between somebody. Do you know anything about those agreements?

Undersecretary WINSTON. That was not handled by me. I understood Chairman Green had an agreement from the representatives of the American claimants, representatives of a majority of the German property owners, and representatives of the German ships.

Senator JONES of New Mexico. Well, did you or the Treasury Department have any correspondence with the German Government or with any Germans or American claimants looking toward a settlement or an agreement?

Undersecretary WINSTON. The correspondence with the representatives of the Germans was filed on Saturday, I think, or Friday, in the Senate, in response to the King resolution.

Senator JONES of New Mexico. Well, I had not heard of that. Have we got that before the committee?

The CHAIRMAN. Yes, it is printed and we have got it.

Senator JONES of New Mexico. Well, can you state in a general way what that correspondence was?

Senator REED of Pennsylvania. If he is going to state, first with whom? Did the Treasury Department have direct correspondence with the German Government?

Undersecretary WINSTON. No, at no time. These people did not represent the German Government. They represented the ship owners or the property owners.

Senator SHORTRIDGE. May I ask right there, Mr. Secretary, under this bill we retain 20 per cent of the German property, do we?

Undersecretary WINSTON. Temporarily; yes.

Senator SHORTRIDGE. Yes. Now, in consideration of that we in effect assign to Germany the 2½ per cent payments supposed to come to us in the future under the Dawes agreement; is that right?

Undersecretary WINSTON. No; because Germany is not concerned in this transaction at all.

Senator SHORTRIDGE. Well, in what way do we compensate, so to speak, Germany for the 20 per cent retained?

Undersecretary WINSTON. Germans, not Germany.

Senator SHORTRIDGE. Yes.

Undersecretary WINSTON. You must keep that distinct.

Senator SHORTRIDGE. I do.

Undersecretary WINSTON. If it was Germany, why, we could just set off our claims.

Senator SHORTRIDGE. I understand.

Undersecretary WINSTON. It is provided that after the American claimants get 80 per cent out of these other various funds, plus current payments on reparations, then the reparation payments from Germany are divided three ways—one to the American claimant's, one to the alien property, and one to the shipowners—so that, as indicated at the last two pages of the report of the Ways and Means Committee to the House, these payments are distributed.

The CHAIRMAN. Twelve o'clock has arrived, and if there are no further questions to ask Mr. Winston at this time, I would like to have him come to-morrow morning at 10 o'clock.

Senator REED of Pennsylvania. When he comes I want to ask him one question, and perhaps he would want to prepare for it. Why is it not practicable to reserve 40 per cent of the German property in the custodian's hands and liquidate the entire 80 per cent of American claims at once?

The CHAIRMAN. Do you mean 80 per cent? You mean the whole of it?

Senator REED of Pennsylvania. No; I do not mean that at all. Perhaps you had better answer it to-morrow.

The CHAIRMAN. Yes. We will adjourn until to-morrow at 10 o'clock.

(Thereupon, at 12 o'clock noon Monday, January 10, 1927, an adjournment was taken until 10 o'clock a. m. the next day, Tuesday, January 11, 1927.)

RETURN OF ALIEN PROPERTY

TUESDAY, JANUARY 11, 1927

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

The committee met, pursuant to adjournment on yesterday, at 10 o'clock a. m., in room 312, Senate Office Building, Senator Reed Smoot (chairman) presiding.

Present: Senators Smoot (chairman), McLean, Curtis, Reed of Pennsylvania, Ernst, Edge, Shortridge, Jones of New Mexico, Gerry, Harrison, Bayard, and George.

The CHAIRMAN. If the committee will come to order we will now proceed with the hearing.

STATEMENT OF HON. GARRARD B. WINSTON, UNDERSECRETARY (IN CHARGE OF FISCAL OFFICES), DEPARTMENT OF THE TREASURY—Continued

The CHAIRMAN. Senator Jones, I think you were asking certain questions of Mr. Winston at the close. Do you want to go on now?

Senator REED of Pennsylvania. When we adjourned I had a question that I had asked Mr. Winston to think over. I had asked the question and he had not yet answered.

Senator HARRISON. What was the question?

Senator REED of Pennsylvania. Why could we not temporarily withhold 40 per cent of the German property in the hands of the custodian and make an immediate payment of the full 80 per cent on all the American claims? I am prompted to ask the question because under the bill as it is now written the Germans immediately get 80 per cent of their claims, but the Americans, some of them, have to wait six years in order to get their 80 per cent.

Undersecretary WINSTON. When the original bill was introduced last spring the negotiations as to trying to get some amicable arrangement between the various parties in interest were carried on by the Treasury through me. When this bill was introduced the negotiations were carried on entirely by the Ways and Means Committee, and not by the Treasury at all. So my information on the subject is second hand.

I understood that the general scheme was for each of these three interests to make equivalent sacrifices, and it was 30 per cent for the Americans, 30 per cent for the German shipowners, and 30 per cent for the alien property owners.

That then the Germans came to Chairman Green and said they would prefer to make it 20 per cent for the alien property owners

and 50 per cent for the shipowners, which meant the same amount of money from the Germans. I think the reason for that was that the shipowners were all represented, and they are a comparatively small number, whereas the property owners were not all represented, only the majority were represented, and there were so many more property owners, 20,000 or so, that they thought it would be more equitable to take 50 per cent from the ships and 20 per cent from the alien property.

Senator HARRISON. Who made that suggestion?

Undersecretary WINSTON. My understanding, Senator Harrison, is that the Germans made that suggestion to Judge Green of the Ways and Means Committee.

The CHAIRMAN. In other words, they were looking after the greater number of their claimants, and they were the individual claimants. I suppose the ships claimants are very few in number.

Undersecretary WINSTON. There are comparatively few.

The CHAIRMAN. Very few.

Senator REED of Pennsylvania. I can understand why the German property owners are cheerfully giving up 20 per cent. They are getting four-fifths of their property, and this is the only case where any of the Allies has given them anything. I can see their motive all right. But the payment of these American claims depends to a very large extent upon the Dawes annuities being continued for 24 years.

The CHAIRMAN. That is, the 20 per cent of them.

Senator REED of Pennsylvania. And in many cases much more than that.

The CHAIRMAN. No; it could not be more than that.

Senator REED of Pennsylvania. Yes, it could; because all claims over \$100,000 are not paid up to 80 per cent for six years. They do not get immediate payment. And some of us are skeptical about the continuance of the Dawes plan payments for 24 years.

Undersecretary WINSTON. I think it should be recognized, Senator Reed, that this settlement was also acceptable to these American claimants.

Senator REED of Pennsylvania. Yes; and that is comprehensible too because at present they are getting nothing.

Undersecretary WINSTON. That is quite right.

Senator REED of Pennsylvania. That is because Congress has been slow in dealing with the question.

Undersecretary WINSTON. The Ways and Means Committee was up against a practical situation, and if they could get an agreement between all the interested parties that is what they thought they should do.

Senator JONES of New Mexico. May I ask you why we should get any agreement?

Undersecretary WINSTON. Of course, there is no necessity for getting any agreement, except if you do have an agreement then it indicates that all of the people who are to be affected believe that this is fair law as far as they are concerned.

Senator REED of Pennsylvania. It seems to me to be a very ingenuous scheme and a very good one, but that 20 per cent rather sticks in my throat.

Senator JONES of New Mexico. Let me ask you, Mr. Winston, what percentage of this property was paid out under the Winslow Act?

Undersecretary WINSTON. I think about \$50,000,000. Is that not right, Mr. Alvord, under the Winslow Act?

Senator REED of Pennsylvania. Senator Sutherland could answer that.

Undersecretary WINSTON. Senator Sutherland could answer that; yes. That was all the claims up to \$10,000, and \$10,000 on all of the larger ones.

The CHAIRMAN. I have always thought it was approximately \$50,000,000.

Senator REED of Pennsylvania. And when you take that into account the German property owners are being considered better than the American claimants.

Undersecretary WINSTON. They are.

Senator JONES of New Mexico. Mr. Winston, do you know what percentage of the claims of \$10,000 and under were paid out under the Winslow Act? I do not want the figure exactly, but approximately about what percentage?

Undersecretary WINSTON. Mr. Sutherland is the man who can tell that.

Senator JONES of New Mexico. Almost all of them were paid, were they not?

Undersecretary WINSTON. I think practically all of them were paid.

Senator JONES of New Mexico. And do you happen to know what percentage of the present German claimants have been gathered together to give their consent to this proposition or this bill?

Undersecretary WINSTON. I have not the exact figures.

Senator JONES of New Mexico. You spoke a moment ago of all the shipowners. They are relatively few in number, and I can readily understand how they can be gotten together. But you spoke of the rest of the claimants, as I understood you.

Undersecretary WINSTON. All I have is a communication from Doctor Kiesselbach, who represented the German shipowners and the German property owners, that he had a majority of the claims in amounts.

Senator BAYARD. Do you not know what percentage that majority is, do you?

Undersecretary WINSTON. No.

The CHAIRMAN. He was in my office the other day.

Senator BAYARD. Whether it was a bare majority or a substantial majority?

The CHAIRMAN. A substantial majority, nearly all of them, he told me when he was in my office the other morning. I asked him that question when he came and told me of that agreement that was signed by himself for the German claimants and Sidley for the American claimants, and that agreement was, of course, in writing and was addressed to Congressman Green, which I read the other morning.

Undersecretary WINSTON. We have a peculiar situation as to numbers represented. They had a practice, as I understand, of taking

an American stock certificate—say the Baltimore & Ohio common—and putting it in the name of a bank in Germany, and then issuing participation certificates against that, which would make a great number of people interested in that stock certificate equitably, although legally only one person was interested in it.

Senator HARRISON. Well, did they rule that several people could get it, or just that one person could?

Undersecretary WINSTON. Well, the bill provides now, I understand, that the equitable owners of this stock certificate receive the property.

Senator CURTIS. Get their share.

The CHAIRMAN. But the bank will take care of the distribution, because the bank holds it.

Senator HARRISON. The Winslow resolution, as I recall, paid \$10,000 and less to the German claimants.

Undersecretary WINSTON. Returned all the estates up to \$10,000, and paid \$10,000 on all of the larger ones.

Senator EDGE. And that was paid in one payment, was it not? Paid right out of the Treasury?

Undersecretary WINSTON. That was paid right out as it could be done in the ordinary course of business.

Senator JONES of New Mexico. And since the payments under the Winslow Act we have been returning to the owners the earnings on that property.

Undersecretary WINSTON. The earnings on the property have been paid to the owners since that time, with the limitation of up to \$10,000 a year.

Senator REED of Pennsylvania. \$10,000 a year?

Undersecretary WINSTON. Yes.

Senator HARRISON. Well, now, taking into consideration what the German claimants would get under this bill and what they have already received, what per cent would they get more than the American claimants would get at this time?

Undersecretary WINSTON. Well, the value of the property is estimated at about \$250,000,000.

Senator JONES of New Mexico. What would it have been estimated at before the payments under the Winslow Act?

Senator REED of Pennsylvania. Estimated at \$208,000,000 in the House report.

Senator JONES of New Mexico. Well, that is since the Winslow Act?

Senator REED of Pennsylvania. Yes.

The CHAIRMAN. \$300,000,000.

Undersecretary WINSTON. Using these figures here, 80 per cent of \$250,000,000 is \$200,000,000, which they would get under this act. They have also received \$50,000,000 under the Winslow Act. So there is \$250,000,000 out of \$300,000,000 total. Or that would be 84 per cent.

Senator HARRISON. That is what the German claimants would get?

Undersecretary WINSTON. Yes.

Senator GEORGE. Exclusive of the shipowners and the radio stations?

Undersecretary WINSTON. This is only the alien property.

Senator GEORGE. Yes; I understand.

Senator HARRISON. And then the Americans would get 80 per cent?

Undersecretary WINSTON. The Americans would get not 80 per cent, but 80 per cent with the priority.

Senator HARRISON. Well, it is 50 per cent at once.

Undersecretary WINSTON. Well, it is a little more than that.

Mr. SUTHERLAND. I have those figures now.

Undersecretary WINSTON. What are they?

Mr. SUTHERLAND. Do you want to know what has been returned under the Winslow Act?

Undersecretary WINSTON. Yes.

Mr. SUTHERLAND. To October 31, 1926, \$48,685,983.

Undersecretary WINSTON. Well, we were using the round figure \$50,000,000.

Senator GEORGE. Senator Sutherland, does that include principal as well as interest disbursements since?

Mr. SUTHERLAND. That includes all property in cash returned under the Winslow bill from April, 1923, to October 31, 1926, inclusive.

Senator GEORGE. So that includes both the principal and the interest?

Mr. SUTHERLAND. It does not include the current interest?

Senator GEORGE. It does not.

Senator REED of Pennsylvania. It does not include the current interest.

Senator GEORGE. Yes; I understand.

The CHAIRMAN. We had already returned \$272,420,000.

Undersecretary WINSTON. That was property illegally taken, I imagine.

The CHAIRMAN. That was so decided later.

Undersecretary WINSTON. That was not to German claimants.

Senator JONES of New Mexico. There should be added to that figure the value of property returned under section 23, \$5,906,000.

Senator GEORGE. That would include the accrued interest since the passage of the Winslow Act.

Senator JONES of New Mexico. That is earnings since the Winslow Act came into effect.

Mr. SUTHERLAND. Yes.

Undersecretary WINSTON. That is earnings that have actually been paid.

Mr. SUTHERLAND. Earnings that have actually been paid out.

Undersecretary WINSTON. There are some earnings still undistributed.

The CHAIRMAN. Was all of that \$272,420,000 property illegally taken?

Undersecretary WINSTON. Well, we have some question in that lawsuit in New York that Daugherty and Miller are being tried in. I suppose this six or seven million dollars of American Metals property is included in that figure.

The CHAIRMAN. Well, that may be true.

Senator JONES of New Mexico. Well, we will not get back the six or seven million dollars, will we?

Undersecretary WINSTON. No.

The CHAIRMAN. But the bill before the committee here disposes of the property that we actually have, without any discussion at all as to the amount of property illegally returned.

Undersecretary WINSTON. No; that has no bearing.

The CHAIRMAN. That has no bearing at all. It is just what we have got in the hands of the Government.

Undersecretary WINSTON. Yes.

Senator JONES of New Mexico. Mr. Winston, in the tabulation by the Ways and Means Committee in its report there is used in that tabulation \$50,000,000 to be appropriated out of the Treasury on account of the ships. Is that your understanding of it?

Undersecretary WINSTON. My understanding of the theory on which that is claimed is this—

Senator JONES of New Mexico. Well, first answer the question if you do not so understand.

Undersecretary WINSTON. Yes; I understand that there is \$50,000,000 appropriated which will be used for this purpose of paying the American claims. An ultimate \$50,000,000. It starts with \$25,000,000. The theory on which I understand that was made is this: If we are going to pay for the ships we will have to pay for them out of appropriations, and it is perfectly fair, therefore, to appropriate the amount that we are going to pay for the ships at once, and then use that cash, 50 per cent of it, to pay the American claimants, and let the shipowners wait for their 50 per cent until these reparations come in.

Senator JONES of New Mexico. Well, I understood that the Ways and Means Committee expected to pay the shipowners 50 per cent of their claims at once.

The CHAIRMAN. Well, that is true.

Undersecretary WINSTON. Well, assuming that the ship award was \$100,000,000.

Senator JONES of New Mexico. That is just the point that I am coming to exactly. On this whole calculation here they have assumed that we would pay \$100,000,000 for these ships, is that not so?

The CHAIRMAN. That is a part of the bill, that it shall not exceed \$100,000,000.

Senator JONES of New Mexico. I know it shall not exceed, and all of the estimates made for the payment of these claims are on the basis that there will be \$100,000,000 appropriated for those ships.

Undersecretary WINSTON. That is quite right, Senator.

Senator JONES of New Mexico. And the first \$50,000,000 of it we used entirely in the liquidation of American claims.

The CHAIRMAN. Yes.

Undersecretary WINSTON. The bill provides that only 50 per cent of what these actual awards are shall go to the American claimants, so it is possible that the American claimants will not get \$50,000,000 out of this appropriation.

The CHAIRMAN. Well, why do you make that statement?

Undersecretary WINSTON. Well, I mean, suppose that the awards were found to be \$80,000,000, then they would only get \$40,000,000.

The CHAIRMAN. Yes; but I haven't any doubt that the awards will be \$100,000,000 from the ships that were taken.

Undersecretary WINSTON. Well, I am satisfied myself that it is the intention that they shall receive \$100,000,000.

The CHAIRMAN. I think it will be more than \$100,000,000, but it is limited in this act here to \$100,000,000.

Senator JONES of New Mexico. And I want to express it as my view now that we should not make any provision for an allowance of anything like \$100,000.00 on account of those ships.

Senator McLEAN. Well, haven't there been appraisals made of those ships?

The CHAIRMAN. And it is more than \$100,000,000.

Undersecretary WINSTON. The appraisals of those ships vary from \$33,000,000 I think, to about \$250,000,000.

Senator JONES of New Mexico. No; we had a regular appraisal of those ships, and that is undoubtedly what Senator McLean refers to.

Senator McLEAN. Yes.

Senator JONES of New Mexico. At the time the ships were taken a commission was appointed to appraise their value at that time, and they did so, and they appraised the value of those ships at about \$33,000,000.

The CHAIRMAN. \$35,000,000.

Senator JONES of New Mexico. And I am convinced in my own mind that we could never get anything like as fair an appraisal now as we could and did then.

Undersecretary WINSTON. May I make this suggestion? We took those ships from their individual owners. If we are doing equity we should pay the value of those ships to their owners. Now the value of those ships is not established by an ex parte appraisal by American interests.

Senator JONES of New Mexico. Now may I ask there, who is it that appraises the value of this property which the Alien Property Custodian has taken over?

Undersecretary WINSTON. For what purpose?

Senator JONES of New Mexico. For any purpose? For the purpose of liquidation? A great deal of it has been actually sold and converted into cash and then changed. Now who appraised the value of the original property there?

Undersecretary WINSTON. If the property was sold it was probably sold on the market for the best they could get for it, and that fixes its value.

Senator JONES of New Mexico. Well, now you say it is probably so. I do not think we ought to let this case rest on mere possibilities. We ought to know what the facts are.

Undersecretary WINSTON. I can not tell the facts, Senator, because I have not been in charge of the alien property.

Senator JONES of New Mexico. Very well then; that is all right.

The CHAIRMAN. Senator Sutherland is here now.

Senator JONES of New Mexico. I know. We will get at that later on. But this witness was making reference to a very important point that as to these ships we should have a joint appraisal of their value. But here the much larger part of the German property is taken over by the Custodian, and I suppose half or more of it has been converted in some fashion, and if there has ever been any public sale or any bipartite appraisal of it I have never heard of it; and I

do not see why we should deal with these shipowners in any different way than we have been dealing with the owners of the other property which the Alien Property Custodian has.

Senator HARRISON. Who was on this commission that made this appraisal of these ships?

Undersecretary WINSTON. I understood it was the American Navy.

Senator HARRISON. The American Navy?

Undersecretary WINSTON. Yes.

Senator HARRISON. Who appointed them?

Undersecretary WINSTON. I do not know that, Senator.

Senator REED of Pennsylvania. Was that during hostilities that they were appraised?

Senator BAYARD. They were appraised at the time they were taken over, Senator; and you must take into consideration this fact, that when we did take them over they were gutted by the German officers who had charge of them, and they were taken over at their then present value.

Senator REED of Pennsylvania. I understand that, but there was an uncertain factor in the appraisal because nobody could know when the war was going to end.

Senator HARRISON. But the prices at that time of ships were higher than they are now, were they not? Ships were bringing a tremendous price at that time.

Senator REED of Pennsylvania. Price of free ships, yes.

Undersecretary WINSTON. The bill proposes to pay the value of these ships in the condition they were at the time that we took them over.

Senator JONES of New Mexico. And there is nobody living who knows the condition in which they were at the time they were taken over.

Senator REED of Pennsylvania. Oh, yes.

Undersecretary WINSTON. Oh, yes; they were all inspected by the Navy.

Senator GEORGE. Well, the whole scheme of this bill contemplates fixing the value of these ships at \$100,000,000, does it not?

The CHAIRMAN. Not to exceed \$100,000,000.

Undersecretary WINSTON. No.

Senator GEORGE. Well, I know, but is not the whole bill framed on that theory?

Undersecretary WINSTON. The \$100,000,000 limitation came in, I think, originally at my suggestion in the first Mills bill. These two values were put before us, \$33,000,000 and \$250,000,000, and I thought that we should not submit a wide-open proposition like that under which we might be forced to pay \$250,000,000 as the value of these ships, and I suggested to the Germans that they ought to put a limitation on them, and after some discussion the limitation for all of these claims, radios and patents and ships, was fixed at \$100,000,000. The patent question at that time was very uncertain. I did not know what might be the value of these two or three thousand patents that we had taken over, and I thought in preparing the first bill, the Mills bill.

Senator BAYARD. May I interrupt you, Mr. Winston, there for a moment? In the matter of the ships. They were valued by a governmental instrument, it was a commission, you can call it what

you please, at \$33,000,000, as their then going value in connection with the market price at that time, taking into consideration their then condition. Let me call your attention to this. The Alien Property Custodian sold a lot of patents to the Chemical Foundation for two hundred and odd thousand dollars. Now, then this commission ought not to go into any other value of those patents than that established.

Undersecretary WINSTON. No.

Senator BAYARD. Then how can this commission go into any other value than the value established by the commission appointed by the President at the time the ships were valued, although they were not sold at that time? They were taken in the same way that the patents were taken.

Undersecretary WINSTON. If you want to do equity to these private owners you should pay for the value of the property you take. Now we wanted to pay the value of the patents that we still have. We do not propose to go back of any sales that were made.

Senator JONES of New Mexico. Well, if you are going to do equity along the lines that you suggest why not go back of the whole transaction?

Undersecretary WINSTON. Because that should come, if at all, in a separate bill. In preparing this bill originally it was desired to dispose of the German property we now hold. Not sales that we have had in the past, or not setting up claims for damages for actions in the past. Now, at that time nobody in the Government knew what the value of these patents were. The radio stations, you could fix that value fairly accurately.

Senator HARRISON. What was the value of the radio stations?

Undersecretary WINSTON. I do not recall now.

Senator JONES of New Mexico. There was only one station, and it was appraised at the time it was taken over at \$490,000.

The CHAIRMAN. There were two stations.

Senator JONES of New Mexico. Well, one was turned back because it belonged to the French and not the Germans.

Undersecretary WINSTON. The ships were valued from \$33,000,000 to \$250,000,000.

Senator JONES of New Mexico. Well, who made the valuation of \$250,000,000?

Undersecretary WINSTON. That was the value of tonnage, the value per ton in the world market at about that time.

Senator JONES of New Mexico. Well, who made that valuation of \$250,000,000?

Undersecretary WINSTON. That was the cost of so much tonnage in the world market.

Senator JONES of New Mexico. But who made it, I am asking?

Undersecretary WINSTON. It was made by the price of ships, the market for ships at that time.

Senator HARRISON. Well, the Navy took the figure of \$33,000,000.

Senator JONES of New Mexico. Who made the valuation of \$250,000,000?

Undersecretary WINSTON. Well, that is the market value of ships at that time.

Senator SHORTRIDGE. Who made it?

Senator REED of Pennsylvania. Some clerks made it.

Senator SHORTRIDGE. Did the Germans make it?

Undersecretary WINSTON. No; that was the world market of ships. If you wanted to buy a ship in 1917 you had to pay so much a ton.

Senator HARRISON. Well, did not the Navy who valued the ships at \$33,000,000 take that into consideration when making their valuation?

Undersecretary WINSTON. I do not know. It was the world market for ships.

The CHAIRMAN. We paid as much as \$225 a ton for ships ourselves.

Senator JONES of New Mexico. I may state at this point that a witness from the Judge Advocate General's office, I forget his name, went into that whole question and told how the valuation was made by the commission, who constituted it, and he explained that it would be impossible to fix a value at the present time upon those ships, and that it was done at that time thoroughly, and taking into consideration the condition of the ships, and that the valuation was placed in the records of the ship itself. A great many of those ships have been sunk, and the records have been sunk with them. And that has all been gone into in the House hearings. And that witness said that it would be impracticable at that time to value the ships in the condition they were at the time the Government of the United States took them over.

The CHAIRMAN. Personally I think the biggest steal in the whole war was the steal of those patents turned over to the Chemical Foundation. They got patents that were worth millions and tens of millions of dollars.

Senator JONES of New Mexico. Mr. Winston has just stated that that question is to be left open.

Undersecretary WINSTON. This bill does not touch it.

Senator CURTIS. Well, that question has been virtually decided by the court, has it not, so what is the use of wasting time on that?

Senator JONES of New Mexico. And if that question has been decided by the court, as it has, the Senator is quite right about it, and we are not going into a revaluation of those patents turned over to the Chemical Foundation, then I inquire why we should go behind the valuation we put upon these ships at the time?

The CHAIRMAN. Well, those were sold outright to other parties.

Senator JONES of New Mexico. Well, these were sold and turned over to the United States and that constituted the transfer of title.

Senator BAYARD. They were taken over immediately for governmental purposes, and they are not for sale, perhaps, for immediate use. And the patents were afterwards taken in that Chemical Foundation operation at a sum of \$200,000.

Senator SHORTRIDGE. Who was it that made these valuations of these ships taken over?

Undersecretary WINSTON. The Navy Department.

Senator SHORTRIDGE. And how was it, and when, and under what authority, and by virtue of what arrangement?

The CHAIRMAN. Those valuations were made by the Navy Department. The first valuation when the ships were taken over.

Senator HARRISON. Mr. Winston, may I ask you this question? You say that the value of these patents would be fixed at the price

that they were sold at, and they all have been sold, have they not, to the Chemical Foundation?

Undersecretary WINSTON. No; the patents that were sold to the Chemical Foundation are not touched in this bill. This bill refers only to the patents that we still have.

Senator HARRISON. Well, what has been the estimated value of those that were not sold?

Undersecretary WINSTON. I have not seen an estimate as to that.

Senator HARRISON. There has not been any estimate placed upon them at all?

Undersecretary WINSTON. I do not know how you can put an estimate yet until you investigate every patent, and it is for that reason that we put this \$100,000,000 limitation in.

Senator BAYARD. Does this bill intend by its provisions in any way to interfere with the value realized by the sale of other property than ships and patents?

Undersecretary WINSTON. Not at all.

Senator BAYARD. In other words, you take that as an established fact merely because there was a sale and a transfer of character of the property from kind into money.

Undersecretary WINSTON. This bill purports only to cover the property now in the hands of the Alien Property Custodian. And if he has sold any of it the bill does not touch it.

Senator BAYARD. And you disregard any findings made by any proper body at the time of the taking as of the then value?

Undersecretary WINSTON. We provide for an ascertainment of the value of the ships and of the patents.

Senator BAYARD. Yes; but you disregard any further ascertainment and do not feel bound by that in any way?

Undersecretary WINSTON. We do not make conclusive at all the finding of the Navy Department as to the value of those ships, because, as I say, it was an ex parte determination in our own interests. If we are to do equity we must pay what is the fair value.

Senator HARRISON. Well, Mr. Secretary, in that \$100,000,000 that is proposed to be appropriated you do figure the value of the ships since the time we took them over?

Undersecretary WINSTON. Yes.

Senator HARRISON. And the patents and the radio station.

Undersecretary WINSTON. You see there are 10 years of interest on those ships.

Senator JONES of New Mexico. I think it would be advisable at this point to put in the record the resolution under which these ships were taken.

The CHAIRMAN. I was going to speak of it.

Senator JONES of New Mexico. On page 180 of this document Mr. Neagle, of the office of the Judge Advocate General, Navy Department, was the witness, and I find in his testimony this statement:

The ships that are referred to in this bill were taken over by the United States under the presidential order in conformity with the resolution of May 12, 1917.

The act or the resolution provided that when the ships were taken, the title should pass to the Government, so that those ships are Government property now—at least, when they were taken—and did not at any time come under the cognizance of the Alien Property Custodian.

There were about 100 ships seized, I believe, and the resolution provided that after they were taken the Navy Department should provide a board to survey and appraise them.

A board was appointed for that purpose, and a survey and appraisal was made, which was reported to the department, as contemplated by the resolution.

I would like to call the committee's attention to the fact that the resolution says that the report of the board shall be competent evidence in connection with any claim.

Undersecretary WINSTON. May I suggest, Senator, that that resolution is still in force, and that the appraisal will be competent evidence before the arbiter in this case.

Senator JONES of New Mexico. Well, why is it not competent evidence before this committee?

Undersecretary WINSTON. It is competent *prima facie* evidence.

Senator JONES of New Mexico. Well, it does not say competent *prima facie* evidence. It says "shall be competent evidence."

Undersecretary WINSTON. Well, that does not mean it is conclusive. It is evidence.

Senator JONES of New Mexico. Well, why should not this committee accept it as conclusive?

Undersecretary WINSTON. Because the resolution itself does not make it conclusive, and because if you are doing equity you have got to pay the fair value of those ships and not some value determined by a partisan commission.

Senator SHORTRIDGE. What are you reading from, Senator?

Senator JONES of New Mexico. I am reading from the testimony taken before the Ways and Means Committee, and this was a gentleman from the Judge Advocate General's office of the Navy who knew about the appraisals.

The CHAIRMAN. In the first volume.

Senator JONES of New Mexico. In the first volume of the hearings before the House Committee.

Senator EDGE. That is the latest hearing—the present session hearings?

Senator JONES of New Mexico. No; not the present session. This was not gone into, as I understand it, at the present session.

Senator REED of Pennsylvania. This was in the hearings on the Mills bill.

Senator JONES of New Mexico. Mr. Mapes asked this witness:

Would it be your judgment, then, that it would be as well, perhaps, to take the valuation fixed by the board as to provide for this way of fixing a valuation on them?

Mr. NEAGLE. I believe that would be the only practical and reasonable thing to do.

And in his testimony he goes into that question at length as to how the appraisal was made, and why it is impossible now to get any definite evidence to bear upon the question of valuation.

Undersecretary WINSTON. If Mr. Neagle's statement is correct that that is the only evidence available, and if the resolution makes that competent evidence, that could be under this bill the only evidence that the arbiter could consider.

Senator JONES of New Mexico. Well, if we want the arbiter to set that up as the only evidence, why should not we do it now, and why have an arbiter at all?

Undersecretary WINSTON. Because it may not be the only evidence.

Senator JONES of New Mexico. Well, we know in the nature of things, and according to the statement of Mr. Neagle it is the only practicable evidence. The ships are not here now. Their present condition—I mean looking at them now—would only be a guess as to what the condition was at the time they were taken over.

Senator EDGE. In other words, everything that has been expended on them since has been expended by ourselves.

Senator JONES of New Mexico. Yes.

Undersecretary WINSTON. The effect of that resolution, Senator Jones, is to make our evidence, the Government evidence, simply an introduction of this appraisal. Then the burden is on the Germans to show that it is wrong.

Senator JONES of New Mexico. Well, that is your construction of it.

The CHAIRMAN. Well Senator Jones, you do not understand that the limitation of \$100,000,000 means that there is going to be \$100,000,000 paid?

Senator JONES of New Mexico. That is just exactly what is contemplated by this bill, in my opinion.

Senator HARRISON. Well, there is not much doubt about that; \$100,000,000 will be paid.

Senator REED of Pennsylvania. Well, the House committee report assumes that it will be paid.

Senator JONES of New Mexico. Yes; it does.

Senator HARRISON. Can you not figure up what will be the interest charge since we took over these ships on the basis of this estimate, Mr. Secretary?

Senator REED of Pennsylvania. That is easy. It is 10 years' interest at 5 per cent.

Senator HARRISON. And also what the interest on this radio station that we took over at that time will be, and then give us some idea as to the limitation of the patents that will be paid, so if we want to write it into this bill and reduce it to that figure we can do it.

Undersecretary WINSTON. I have no information on which I can put the limitation of patents.

Senator REED of Pennsylvania. Senator Harrison, the \$33,000,000 appraisal for the ships would have added to it 10 years' interest at 5 per cent, which would add one-half of the original appraisal, making \$50,000,000 payable to the shipowners now on the basis of the Navy appraisal.

Senator HARRISON. And then the radio station was valued at about one half a million dollars, I understand, and there would be 10 years' interest.

Senator REED of Pennsylvania. Yes, and then the patents that are valued are only those patents which the United States took from the Alien Property Custodian or from the owners. It does not include patents like the Chemical Foundation.

Senator HARRISON. That is fixed.

Senator REED of Pennsylvania. Which was held by the Custodian or sold to outsiders. It is only those few patents which the Government took for its use and still holds.

Senator JONES of New Mexico. I find that the pertinent part of the resolution referred to a while ago is quoted by Mr. Neagle in these hearings. Mr. Neagle says:

The resolution of May 12, 1917, the second section, says:

"That the Secretary of the Navy is 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 make a written report thereof to the Secretary. These findings shall be considered competent evidence in all proceedings on any claim for compensation."

Then, Mr. Neagle continues—

I have here the form in which the report of the board was made in each case. They made a separate report on each vessel.

Then, he quotes—

The board appointed by the Secretary of the Navy under date of May 19, 1917, with the approval of the President, after full and careful consideration of the age and physical condition of the steamship (blank), its equipment and appurtenances at the time of the taking thereof, and all other information and facts bearing upon the value thereof, has ascertained and determined the actual value of said vessel, its equipment, and appurtenances, and of the property therein contained at the time of its taking, to be (blank).

This value is composed of the following items:

- (a) The vessel, its equipment, and appurtenances.
- (b) All other property contained therein, including fuel, consumable supplies, cargo, etc.

Then on that form, in each case, the value of the vessel is stated.

Senator BAYARD. Taking into consideration all the things at the time.

The CHAIRMAN. Then he goes on and says, in answer to a question by Mr. Lea:

Mr. LEA. Will you give us the total value of the ships as so appraised?

Mr. MILLS. Roughly speaking, \$33,000,000.

Mr. NEAGLE. The value was placed on each ship separately, and has not been footed up; but it was in the neighborhood of between \$33,000,000 and \$35,000,000, I believe, for the 99 ships.

Senator JONES of New Mexico. And then Mr. Neagle later on says:

A good many of them have been sold. Some are still in operation, both by the Shipping Board and by the Navy Department.

Senator EDGE. If it is obtainable it would be interesting information to have the price received for those that were sold.

Senator JONES of New Mexico. I think it would.

Senator REED of Pennsylvania. That would depend upon the time.

Senator SHORTRIDGE. Does the record show that anybody filed any protest or objection to that?

Undersecretary WINSTON. We were at war with Germany.

Senator SHORTRIDGE. I grant we were; but had anybody questioned the conclusions reached by that board?

Undersecretary WINSTON. We have questioned those conclusions very strongly.

Senator BAYARD. Mr. Winston, it is your contention that this Mixed Claims Commission can place any value it pleases upon the ships, notwithstanding this finding of the Naval Board of Inquiry?

Senator REED of Pennsylvania. The arbiter would do that.

Undersecretary WINSTON. Any value that is justified by evidence.

Senator REED of Pennsylvania. This would not come of the Mixed Claims Commission. It comes to an arbiter who is established by the bill. A single individual.

Senator HARRISON. Who was the arbiter?

Senator REED of Pennsylvania. The President.

Senator BAYARD. But then he would have the corresponding right under Mr. Winston's claim to arrive at any value other than the \$33,000,000 arrived at?

Senator REED of Pennsylvania. Absolutely.

Senator GEORGE. Not exceeding \$100,000,000.

Senator REED of Pennsylvania. No; it would have to be not exceeding \$100,000,000. He would have a right to arrive at any value. The only rule set for him is the provision that these ships shall be valued at their worth to the owner at the time of the taking, bearing in mind the fact that they could not be used until the termination of the war, which was stated as July, 1921.

Senator GEORGE. Which was an undetermined contingency at that time.

Senator REED of Pennsylvania. Which was, of course, undetermined at the time they were actually taken.

The CHAIRMAN. That date has been changed. I have the statement from the department stating that it was 1919 instead of 1921.

Senator REED of Pennsylvania. I do not see it.

The CHAIRMAN. Well, I will get the Government statement.

Senator CURTIS. We can take that up later.

The CHAIRMAN. We can take that up later, but I will assure you that it is 1919 instead of 1921.

Senator CURTIS. Let us get through with the witness.

Senator REED of Pennsylvania. Mr. Winston, would this bill be substantially satisfactory to the German claimants if we were to provide that 40 per cent should be withheld and the first 20 per cent of that should be paid in the years immediately succeeding the passage of the act?

Undersecretary WINSTON. That is a question I can not answer, Senator Reed, because I did not participate in any of these negotiations in which the 20 per cent was fixed.

Senator REED of Pennsylvania. You see what we are doing is to make the payment of the full 80 per cent to American nationals contingent on the continuance of the Dawes plan payments for the next six years. Now, it occurs to me that the wiser way to arrange it would be to let the German payments in full for their 80 per cent depend upon that contingency. If anybody is going to take the risk of a default in the next six years it ought to be the Germans who do the defaulting rather than our people.

Undersecretary WINSTON. Well, that is the way I feel about it personally, but I did not participate in these arrangements and, of course, I can not speak at all for the Germans.

Senator REED of Pennsylvania. We place on 178 American claimants all the risk that is involved for the continuance of the Dawes plan for the next six years.

Senator JONES of New Mexico. And it is even more than that unless we turn over to the American claimants \$50,000,000 out of the American Treasury.

The CHAIRMAN. Yes.

Senator REED of Pennsylvania. Well, we are sure that they are going to get \$50,000,000 for the ships, Senator, because the appraisal of 1917, plus accrued interest will make up 50 millions of dollars. It occurs to me—I do not like to protect this examination, but we might as well clear up this point—it occurs to me that if we provided that in this special deposit fund was to go the first \$50,000,000 payable on account of ships, instead of 50 per cent of what was paid on account of ships, then we make sure that there will be that \$50,000,000 fund, and we do not require the arbiter to give them \$100,000,000 for those ships. Do you catch my point?

Senator JONES of New Mexico. Yes; I catch your point. But what I wanted to call attention to, in the estimate of time of payment, as made by the Ways and Means Committee in its report, it includes the payment in 1927 of \$25,000,000 on account of these ships, and in 1928 of another \$25,000,000 on account of the ships, and to go to these American claimants the whole \$50,000,000. And upon that basis only will the American claimants get their full amount within the six-year period, and only on that basis will the rest of this money be paid within 26½ years. And I call attention to the fact that the \$60,000,000 allowed to the United States by the Mixed Claims Commission is not provided for at all, either interest or principal, and that as to that \$60,000,000, even under the calculation made by the Ways and Means Committee, we will not begin to get any part of it until after 26 years.

Senator REED of Pennsylvania. Is that correct, Mr. Winston?

Undersecretary WINSTON. I do not get that.

The CHAIRMAN. I do not so read it, Senator.

Senator JONES of New Mexico. If you will just look at the Ways and Means Committee report you will see that that is the case.

Undersecretary WINSTON. You must remember that the alien property is not held under the Berlin treaty as security for the payment of the United States claims but only as security for the payment of the claims of American nationals.

Senator JONES of New Mexico. But in the agreement for the Mixed Claims Commission it was provided there that the claims of the United States should be ascertained.

Undersecretary WINSTON. Yes.

Senator JONES of New Mexico. And the Berlin treaty, through the provisions of the Versailles treaty incorporated, provided that this property could be used for the payment of the claims of the United States.

Undersecretary WINSTON. Oh, yes, the Versailles treaty did.

Senator JONES of New Mexico. Yes, which is incorporated in the Berlin treaty. And so on the \$60,000,000 of the claims ascertained by the Mixed Claims Commission as due to the United States, no part of the principal or interest will come to the United States until after 26 years plus, and if you do not apply \$50,000,000 out of the Treasury to the payment of these claims, I do not know when we would begin to get anything—probably not for 40 years. And in the meantime we would have due us the \$60,000,000 plus the 5 per cent interest, which would be more than doubled at that time, and then you would have to amortize a debt, at that time of probably \$120,000,000 with 5 per cent interest out of a fund of less than \$11,000,000 annually.

Undersecretary WINSTON. May I state the way it appeals to me as a practical proposition. Certain courses can be taken. You can confiscate the German property and apply it on the claims of the American nationals and on the claims of the United States, and so far as we are concerned we are paid. The Government and our people.

Senator REED of Pennsylvania. Now that is what all of our allies have done, is it not?

Undersecretary WINSTON. That is what the Allies have done.

Senator JONES of New Mexico. At this point I wish to take exception to the use of the word "confiscation" in that connection, and it seems to me that any American citizen, under the treaties which have been entered into, should not for a moment think of using the term "confiscation." In my judgment it is not confiscation to use this property in the way that is provided for in the Berlin Treaty. Under that treaty the German Government itself has agreed to pay its own nationals for this property, the German Government has expropriated this property, and by its solemn agreement, its treaty with the United States, has agreed that this property shall be used in this manner for the payment of American claims. And in view of all those facts I think it is entirely improper for any representative of the Government or any citizen of the Government to use the expression "confiscation" in such connection.

Undersecretary WINSTON. I think the Supreme Court has said we have already confiscated the property, and that is their language in the Chemical Foundation case. And then if we have already confiscated it, Senator Jones, this would be simply the application of property already confiscated. The second extreme is to return the German property and let the Americans wait until they get their payment out of this 2 1/4 per cent. And the reason for the returning of the German property is the establishment of a public policy or an international policy which the United States believes it should establish. If the United States believes it should establish a public policy it should establish that policy at the expense of the people as a whole, and not solely at the expense of the American claimants. So if Congress decides that they want to establish that policy of not applying the property of enemy nationals to the debt of the enemy government, then the United States should in equity sacrifice some of its rights in favor of its nationals who have claims against Germany. I have thought that we are taking too much from the American claimants in returning their security until they are actually paid, but this compromise bill has been made. It has been accepted by all of the parties. The German property owners, the German ship owners, and the American claimants.

Senator EDGE. That is what you call the three-party plan, in other words.

Undersecretary WINSTON. Yes, this compromise plan, and it seems the only practical plan to settle these questions. I know it is not perfect.

Senator JONES of New Mexico. Well, I am unwilling to allow American claimants and German claimants to get together and agree upon a national policy for the United States, and that is the effect of this bill.

Undersecretary WINSTON. I do not think it is quite accurate to state it that way, Senator. The policy was established by the House of returning this German property, and the claimants got together simply on what they thought was a fair treatment of them under those particular circumstances.

Senator JONES of New Mexico. Well, I know that some of the leaders in the House supposed that there was to be no charge upon the Treasury of the United States, and that the American claimants should be paid in full from other sources than the United States Treasury, and that in my opinion this bill does not accomplish those purposes.

The CHAIRMAN. Do you mean that some of the House members felt that the Government of the United States should not pay a dollar for ships that were taken?

Senator JONES of New Mexico. No.

The CHAIRMAN. Well, that is about the only money that the Government of the United States will have to pay.

Senator JONES of New Mexico. Are we not practically under this bill waiving \$60,000,000 with interest on a claim which has been allowed to the Government of the United States?

Undersecretary WINSTON. Their consideration for that is that you are depriving the American claimants of their security for the sake of a public policy which you wish to establish.

Senator JONES of New Mexico. Well, so far as I am concerned I do not wish to establish any such policy.

Undersecretary WINSTON. Well, I am talking about Congress.

The CHAIRMAN. That Congress wishes to establish.

Senator JONES of New Mexico. And as to that question of public policy, the way it is worded in section 2 of this bill, as I construe this bill, is to establish a policy and at the same time guarantee to the German claimants of this property that they will ultimately be paid, and if in the course of time the payments under the Dawes plan should fail, or if they should fail within a reasonable time to pay these German property owners for their property, they will come to the United States and say that "under your declaration of policy in section 2 of this bill you have guaranteed to return to us all this property, and we now ask that an appropriation be made for it."

Undersecretary WINSTON. The alternative is either to take this German property and apply it on these claims, or to deprive the Americans of their security without giving them an opportunity of reasonable payment.

Senator GEORGE. If we establish it as a national policy, a policy of this Government that we are not to take any property seized of an alien or the national alien, thereafter at least the American citizen could not claim that he had any security for any counter obligation at all, because if we establish that policy, why then there is no security left for the American citizen who has a claim.

Undersecretary WINSTON. He has a security to-day.

Senator GEORGE. Well, he has it under this property.

Undersecretary WINSTON. Yes.

Senator GEORGE. But now if you change that and say that notwithstanding this treaty we are going now to declare the policy, why

he has no security except the moral obligation, which we probably would assume, to pay him out of the Treasury.

Undersecretary WINSTON. Well, that was the theory of the original Mills bill, that we would establish this policy and the Treasury would pay it.

Senator GEORGE. Yes. Well then, Mr. Winston, this bill would come to the same thing eventually. It is not inconsistent with the original theory.

Undersecretary WINSTON. No, it is not.

Senator GEORGE. No, it is not. I so conceive it.

The CHAIRMAN. And I think if the Dawes plan failed we would have to do that.

Senator GEORGE. Undoubtedly.

The CHAIRMAN. Undoubtedly. I said so before, and I say so now, that that is what would happen.

Senator JONES of New Mexico. I would like to make this point. The statement was made by Mr. Winston just now that to hold this property as security for the American claims is contrary to the policy declared in section 2 of this bill.

Undersecretary WINSTON. That is right. We are establishing a policy different from the Berlin treaty.

Senator JONES of New Mexico. Or in other words, we have established a policy through the Berlin treaty which we by this bill now say was wrong, but inasmuch as through the Berlin treaty we did hold this property as security for the American claimants, that we are now going to declare another policy, and inasmuch as we change our policy our liability to American claimants accrues. There are millions of dollars in claims against the government of Mexico to-day. No suggestion has been made that the Treasury of the United States should be responsible for any of those claims. And the only reason now why it is suggested that the Government of the United States is responsible for any of these claims is because through the Berlin treaty we acquired properties which could be subjected to the payment of these claims, and now it is sought to turn around and reverse the policy which has been declared by the Senate in its treaty with Germany, and the policy which has been declared by all of the Allies of the United States, or the governments fighting Germany during the war; it is going in the face of everything we have done heretofore, of everything that all the other governments have done in adjusting their claims against Germany. And I, for one, feel that we are not justified in any sense of the term in dealing with this question from any such premise.

Senator HARRISON. Well, section 2 states the facts. It says it has been the established policy of this Government.

Senator JONES of New Mexico. And it is the old traditional policy.

Senator REED of Pennsylvania. Well, as to that traditional policy, I suppose it is not better expressed than in the Prussian treaty of 1785, and all that that provides is that where private property is taken it shall be compensated for, and we have made provision in the treaty of Berlin for compensation to these German nationals.

Senator JONES of New Mexico. The Senator from Pennsylvania is absolutely right about it. This in no sense can be considered con-

fiscation of this property by the United States if we apply it to the settlement of these claims. And may I call attention further to the fact—and I think we had better insert it in the record now—in a memorandum which was furnished to Mr. Winston by the German Government, which is printed in this pamphlet which we received yesterday morning, a full statement is made there as to how Germany has been compensating her nationals for the property which has been taken over by England, France, and the other countries. She has compensated her nationals, or provided a means for compensating her nationals; and, of course, they did not make any compensation for German nationals whose property we have, because we have not yet disposed of it, and they are simply waiting our disposition of it before they compensate their nationals for it. The compensation of their nationals for this property, certain classes of property, is only 2 per cent, but that was because in Germany, owing to the depreciated currency there the property of the nationals of Germany living in Germany was taken through the inflation of the currency, so that in a great many cases they got nothing. Its value was wiped out as to them. And they thought that these German nationals who had property in these enemy countries should not be compensated at any greater rate than the people in Germany were being compensated for their property and its depreciated value owing to the extreme inflation of that currency. The whole statement is made here in that pamphlet which was handed to us yesterday. And at this point I would like to insert in the record the letter and the memorandum to which I have just referred. This appears at page 17 of Senate Document 191.

(The letter referred to, together with the memorandum are here printed in the record in full, as follows:)

WASHINGTON, D. C., November 16, 1926.

Hon. GARRARD B. WINSTON,

Undersecretary of the Treasury, Washington, D. C.

DEAR MR. WINSTON: I understand that some members of the Committee on Ways and Means are of the opinion that German nationals whose property has been seized by the United States were compensated by Germany and that huge sums for this purpose appear in the German budget. I take the liberty of drawing your attention to the annexed memorandum, which upon the request of the State Department was delivered to Mr. Castle by the German Embassy on April 20, 1926. It appears from this memorandum that no compensation whatsoever has been paid to such German nationals, which is explained by the fact that under the laws of Germany compensation can only be paid in the event of confiscation, it being the common opinion in Germany that so far, the German private property seized by the United States has not been confiscated.

I am, my dear Mr. Winston,
Very respectfully yours,

DR. KARL VON LEWINSKI.

MEMORANDUM

On April 12, 1926, the following questions were submitted to me by Mr. Castle:

(1) I should like to know whether the German Government has taken any assignment from German nationals covering property now in the hands of the Alien Property Custodian.

(2) Does the German budget for 1924-25 contain this provision: Settlement charges, compensation for losses due to sequestration and liquidation of German property in foreign countries, 289,000,000 marks? Does the 1925-26 budget contain a similar provision?

The first question I have already answered in the negative. After communicating with my Government I have merely to confirm my statement.

As regards the second question I have upon inquiry received the following information from my Government:

The German budgets for 1924, 1925, and 1926 contain certain items for the allowance of compensation to German nationals whose property has been confiscated by victorious powers during or in consequence of the war. The table annexed hereto (Exhibit 1) specifies these items and shows the amounts actually granted and paid under them to German nationals. This table shows in particular, that the item of 289,000,000 marks contained in the budget for 1924 and mentioned in Mr. Parker Gilbert's report of May 30, 1925, referred principally to losses caused to German nationals through compulsory measures (expatriation and expulsion from territories ceded to allied powers under the Versailles treaty) and to damage to German private property caused by hostilities within the former German colonies. Only 17,400,000 marks out of this item of 289,000,000 marks were granted and paid for damages caused by confiscation of property abroad. The corresponding items in the budget for 1925 and 1926 are 89,700,000 and 4,141,200 marks, respectively.

The German legislation dealing with the compensation of German nationals for losses sustained by confiscation of private property abroad is set out in detail in exhibit 2. It appears from this exhibit that the compensation granted by Germany in such cases averages 4.10 per cent of the pre-war value, that in case of confiscation of cash or securities the percentage allowable is only 2 per cent and that in all cases where the loss sustained exceeds 200,000 marks the percentage allowable for damages beyond this figure is only two-tenths of 1 per cent.

German nationals, whose property in the United States was taken over by the Alien Property Custodian under the trading with the enemy act, have not received any compensation under the laws quoted in the annex and are not entitled thereto for the reason that their property has not been confiscated, but is merely being retained by the United States. If such property were to be confiscated by the United States they would thereby become entitled to the same rate as allowed to Germans whose property was confiscated by the allied powers. As, however, the assets held by the United States consist almost exclusively of cash and securities the percentage to be applied would, with a few exceptions, be 2 per cent of the pre-war value for assets not exceeding 200,000 marks in each particular case and two-tenths of 1 per cent for all amounts exceeding this figure.

It must be noted that the laws set out in the annex do not apply to ships taken by the United States during the war for the reason that the losses sustained by the German shipowners were settled on a different basis. The shipbuilding industry in Germany was a very important one, employing many thousands of mechanics and laborers, and the general welfare was especially involved in this question for the double reason that these workmen were not well adapted to other trades and that the acquisition of ocean-going vessels to enable Germany to undertake once more an export trade—which also involved the import of raw materials for her factories—was necessary if economic life was to be revived and the country enabled to live and to look forward to the payment of reparation obligations. It was therefore considered advisable instead of including the shipowners in the general compensation scheme to meet their requirements for once and all by the payment of a fixed amount under the condition that the sum as so granted were to be used for immediate reconstruction of at least a small part of the German merchant marine. The amounts allowed under this settlement were at first calculated in such a way as to equal about one-third of the pre-war value of the vessels in question. Due to the depreciation of the German currency, however, the sums paid out to the shipping companies decreased in value before they could be translated into the form of ships actually built to such an extent that they did not cover more than approximately 10 per cent of the peace value of the lost fleet. In view of this obvious inadequacy it was expressly provided that the shipowners could retain for themselves any sums which they might afterwards receive from foreign governments on account of lost tonnage. As far as the ships taken in American ports are concerned the situation to-day is that the former owners have not been compensated for them from any source whatsoever and that in the event the United States make compensation for these losses the amounts awarded would go to the former owners.

exclusively, the German Government having no charge or or share in the amounts thus paid.

WASHINGTON, D. C., April 20, 1926.

Senator REED of Pennsylvania. May I ask Mr. Winston what is the amount awarded by the Mixed Claims Commission to the United States?

Undersecretary WINSTON. With interest it is about \$60,000,000.

Senator REED of Pennsylvania. Without interest about \$40,000,000 is that it?

Undersecretary WINSTON. Yes.

Senator JONES of New Mexico. And may I state there that all of these other claims of American claimants include interest, and if you put the United States claim on the same basis you would call it \$60,000,000 in the same sense that you used the expression \$180,000,000 for American claimants.

Senator SHORTRIDGE. Senator Jones, let me ask this question. Does any one question this proposition, that under the treaty between us and Germany all the property which we seized and still hold may be applied to the settlement of claims of our citizens as against Germany? Does anybody question that proposition?

Senator JONES of New Mexico. Yes; that is questioned.

Senator SHORTRIDGE. Does not the treaty specifically so provide?

Senator JONES of New Mexico. My unqualified opinion is that it does.

Senator SHORTRIDGE. Well, such has been my opinion.

Senator EDGE. The Secretary of State also corroborates that.

Senator JONES of Mexico. The Secretary of State is of the same opinion, as stated in the record on yesterday. But in 1925, the German ambassador in his letter—and I think that should in the record at this point, made the claim that owing to the fact that the Government of the United States had accepted 2½ per cent under the Dawes reparation plan, that that was the suitable provision for the payment of American claims called for in the Knox-Porter resolution, which entered into the Versailles treaty. The Secretary of State, Mr. Kellogg, made a reply to that claim, which in my mind, is absolutely conclusive, and I think we had better insert at this point the letter of the German ambassador to the Secretary of State, the letter of the Secretary of State to the German ambassador, and also the reply of the German ambassador to the Secretary of State.

(The three letters referred to are here printed in the record in full, as follows:)

THE GERMAN AMBASSADOR (MALTZAN) TO THE SECRETARY OF STATE (KELLOGG)

[Translation]

GERMAN EMBASSY,
Washington, D. C., August 6, 1925.

Under instructions from my government I have the honor to submit to you the following:

"Public opinion in Germany has of late been paying ever-increasing attention to the question of the release of such property, rights, and interests of German nationals as have come into the possession or under the control of the United States on account of various legislative and other measures during the war.

It is known to the American Government that the present economic situation in Germany is a serious one, due principally to the scarcity of liquid

funds. The fact that it was impossible in spite of all efforts to avoid discontinuance of important industrial enterprises is significant. In connection with certain measures, for the execution of the Dawes plan and with the debates concerning the new German-American commercial treaty, the opinion was voiced from various quarters that the restoration of those assets which are still being detained by the United States might effectively relieve the situation at the present critical moment, that such restoration would facilitate the fulfillment to Germany's obligations and thereby benefit also her creditors who are naturally interested in the maintenance of Germany's economic equilibrium. The fear was expressed that irreparable damage might be done by letting the critical moment pass and it was even intimated that the German Government by remaining inactive any longer might create the impression on the American side as if it were prepared to leave time and means of regulating this matter entirely to the discretion of the United States instead of asserting the rights, secured to the German nationals by the peace treaty in such a way that their realization may furnish the relief hoped for in the present serious situation. The German Government can not but recognize the validity of these arguments and it feels therefore that it is now the proper time to lay before the Government of the United States its conception of the basic principles governing the question of the release.

The German Government and the German owners of private property affected by the measures mentioned above have always recognized with special satisfaction that the United States, as she chose to submit her claims arising out of the war to an impartial arbitral tribunal, so on the other hand made the disposal of the enemy property subject to regulation by treaty. Instead of reserving the right of applying such property to the satisfaction of war claims by way of one-sided liquidation the United States, by incorporating the joint resolution of July 2, 1921, into the peace treaty and by thus making it contractual law, has limited herself in recognition of the sacredness of private property to impressing the German private property with the character of a mere collateral, granting at the same time to Germany a legal right for the release of such property if certain conditions would be fulfilled by her, conditions which were contained in the originally one-sided resolution of July 2, 1921, but now forming part of the treaty.

The German Government is of the opinion that the fulfillment of these conditions is now complete.

In particular the most-favored-nation treatment in all matters affecting residence, business, profession, trade, navigation, commerce, and industrial property rights has been granted by Germany and is in practical application; it will furthermore be secured for the future by the new commercial treaty, the acceptance of which by the German Reichstag is to be expected within the next few days.

The obligation which stands paramount among the contractual conditions mentioned above, viz, the obligation to make suitable provision for the satisfaction of all claims against the German Government of American nationals arising out of the war has likewise been fulfilled. Germany has made such provision by adopting and conscientiously executing the Dawes plan. This plan has established and fixed the maximum burden which Germany is able to bear and has to bear in order to satisfy the various financial obligations imposed upon her. It has deprived Germany of the possibility of making any other provision for the satisfaction of claims of every kind. According to its clear wording, the payments and deliveries to be made by Germany under the plan are to satisfy the claims of the allied and of the American powers (pt. 1, Sec. XI). The committee of experts has not hesitated to express its conviction that by the obligations undergone by Germany, by the collaterals provided by her and by the measures of control executed by the creditor States the satisfaction of all those claims is being safeguarded within the limits of possibility. All these collaterals and guarantees apply also to the American claims.

The Dawes plan, according to its nature, considers Germany's financial obligations in their entirety; it does not deal with the claims of the creditor States separately nor with the problem of distribution. This problem was left to negotiations between the creditors, leaving the debtor States entirely out of contemplation. Consequently the measurement applied in distributing the proceeds can in no way be used against Germany. This applies particularly to the agreements reached in Paris as far as the United States is concerned, including the settlement under which the United States is to be satisfied out of the Dawes payments for the costs of the American occupation instead of

being reimbursed directly by the allied powers which had already received payment therefor from Germany. The fact remains that, by the acceptance and execution of the Dawes plan, Germany has made provision for the satisfaction of all her obligations arising out of the war, including the claims of the United States—provision which, under the circumstances, is the only one possible and which, therefore, must be recognized as suitable under a fair interpretation of the treaty.

The German Government comes therefore to the conclusion that the impediments which so far stood in the way of the release of German private property have now been removed and it hopes sincerely that the Government of the United States, taking into consideration the above-described economic needs of German commerce and industry, will in accordance with the treaty of peace take the appropriate steps in order to restore the rights and interests of German owners of private property which have been affected by the various measures applied by the United States during the war.

Accept, etc.,

MALTZAN.

THE SECRETARY OF STATE (KELLOGG) TO THE GERMAN AMBASSADOR (MALTZAN)

WASHINGTON, May 4, 1926.

I have the honor to refer to your excellency's note of August 6, 1925, in which, under instructions from your Government, you express certain views with respect to the property of German nationals seized by the Government of the United States during the war and still held by the Alien Property Custodian pursuant to existing law.

The department has noted that the German Government is of the opinion that the conditions stipulated in the joint resolution of July 2, 1921, as incorporated in the treaty of August 25, 1921, restoring friendly relations between the United States and Germany, have been completely fulfilled and that as a result the impediments which have heretofore stood in the way of the release of the above-mentioned property have been removed. It has also noted that your Government, in the light of these circumstances and in view of the economic needs of Germany, hopes that the Government of the United States—"will in accordance with the treaty of peace take the appropriate steps in order to restore the rights and interests of German owners of private property which have been affected by the various measures applied by the United States during the war."

It appears from your excellency's note that the German Government, having taken the steps outlined therein, is of the opinion that the United States is under a present legal obligation to return to German nationals the property seized by the United States during the war and now held by the Alien Property Custodian, or its proceeds.

The Department of State is unable to concur in this conclusion. The treaty of Berlin clearly accords to the United States the right to apply this property so far as necessary to the payment of the awards of the Mixed Claims Commission, United States and Germany and of the Tripartite Claims Commission, United States, Austria and Hungary, or, in the alternative, to release it to the former owners thereof, the determination of the policy to be followed by the United States in this connection being specifically reserved to the Congress.

Article II of the treaty of Berlin provides that the United States shall have and enjoy the rights and advantages stipulated for its benefit in certain parts of the treaty of Versailles. Among the rights and advantages thus reserved for the benefit of the United States are those stipulated in articles 207 and 243 of the treaty of Versailles. Subject to a reservation not material to the present question, paragraph (b) of article 207 of the treaty of Versailles confirms to the allied and associated powers—

"The right to retain and liquidate all property rights and interests belonging at the date of the coming into force of the present treaty to German nationals, or companies controlled by them within their territories, colonies, possessions, and protectorates, including territories ceded to them by the present treaty."

Subparagraph 2 of paragraph (h) of the same article provides that in the case of powers not adopting the clearing house procedure (of which the United States is one)—

"the proceeds of the property, rights, and interests, and the cash assets, of German nationals received by an allied or associated power shall be subject to disposal by such power in accordance with its laws and regulations and may be applied in payment of the claims and debts defined by this article or paragraph 4 of the annex hereto. Any property, rights, and interests or proceeds thereof or cash assets not used as above provided may be retained by the said allied or associated power and, if retained, the cash value thereof shall be dealt with as provided in article 243."

Article 243 provides that there—

"shall be reckoned as credits to Germany in respect of her reparation obligations: (a) Any final balance in favor of Germany under * * * Sections III and IV of Part X (economic clauses) of the present treaty."

According to paragraph (1) of article 297 of the treaty of Versailles—

"Germany undertakes to compensate her nationals in respect of the sale or retention of their property, rights, or interests in allied or associated States."

The United States has, therefore, a clear legal right under the treaty to liquidate the German property seized by it during the war; to apply it or its proceeds in satisfaction of amounts due in respect of claims by the nationals of the United States with regard to their property, rights, and interests, including companies and associations in which they are interested, in German territory, in satisfaction of debts owing to them by German nationals, and in satisfaction of claims growing out of acts committed by the German Government or by any German authorities since July 31, 1914; to utilize any balance in satisfaction of the losses and damages for which Germany is liable to the United States under the treaty of Berlin; and to expect Germany to compensate her nationals for any of their property thus liquidated and applied by the United States. In this connection it should be noted that under article 231 of the treaty of Versailles, the benefits of which are also reserved to the United States by Article II of the treaty of Berlin, Germany accepts responsibility, not only for herself, but also for her allies (among whom are Austria and Hungary) for the loss and damage caused by the war.

In addition to the foregoing provisions, the treaty of Berlin contains in its preamble the text of section 5 of the joint resolution approved July 2, 1921, which reads as follows:

"Sec. 5. All property of the Imperial German Government, or its successor or successors, and of all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America, or of any of its officers, agents, or employees from any source, or by any agency whatsoever, and all property of the Imperial and Royal and Royal Austro-Hungarian Government, or its successor or successors, and of all Austro-Hungarian nationals, which was on December 7, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America, or any of its officers, agents, or employees, from any source, or by any agency whatsoever, 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 and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Governments, respectively, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America, and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities, or of any operations of war or otherwise, and also shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce, and industrial property rights, and until the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial Government or German nationals or the Imperial and Royal Austro-Hungarian nationals,

and shall have waived any and all pecuniary claims against the United States of America."

This resolution had for its purpose the termination of the state of war declared to exist between the Imperial German Government and the United States of America by the joint resolution of Congress approved April 6, 1917, and in the absence of effective treaty provisions between the two Governments saving to the United States its rights in the premises, the Congress incorporated in section 5 of the resolution the stipulations set forth above with respect to such rights. The subsequent inclusion of this section in the preamble of the treaty of Berlin in no way restricted or limited the rights accorded to the United States by Article II thereof and outlined above. On the contrary it is clear that the rights reserved by the United States in the joint resolution approved July 2, 1921, are in addition to the rights stipulated for its benefit in those portions of the treaty of Versailles incorporated by reference in the treaty of Berlin. Article I of the treaty of Berlin states that:

"Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations, or advantages specified in the aforesaid joint resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the treaty of Versailles which the United States shall fully enjoy, notwithstanding the fact that such treaty has not been ratified by the United States."

Accordingly, under the treaty of Berlin, the United States has the absolute right to apply the property in the hands of the Alien Property Custodian, or any part of it, to the payment of the awards of the Mixed Claims Commission, United States and Germany, and the awards of the Tripartite Claims Commission, United States, Austria, and Hungary. The question whether this property shall be so applied is, under the trading with the enemy act and under section 5 of the joint resolution of July 2, 1921, as incorporated in the preamble of the treaty of Berlin, reserved to the Congress. No agreement has been entered into by the Government of the United States which is in any way inconsistent with the rights of the Congress in this connection. The adoption by the German Government of the so-called Dawes plan did not affect the rights of the United States with respect to the property held by the Alien Property Custodian. The agreement of January 14, 1925, providing for the distribution of the Dawes annuities and the participation of the United States therein, was not in any sense an acceptance by the United States of such participation as "suitable provision for the satisfaction of all claims against" Germany, Austria, and Hungary within the meaning of the treaty of Berlin. The legal obligation of the German Government under the treaty of Berlin to provide for the payment of the claims of the United States against it, and against Austria and Hungary, remains unimpaired. Article 27 of the agreement of January 14, 1925, specifically provides that the terms of that agreement "do not prejudice any rights or obligations of Germany under the treaties, conventions, and arrangements at present in force."

I have set forth the legal position of the Government of the United States in considerable detail in order to avoid any possible misunderstanding thereof. The question of policy is, of course, separate and distinct from the question of law and, as appears above, has been reserved for determination by the Congress, which body, as your excellency is aware, is now considering that question.

Accept, etc.,

FRANK B. KELLOGG.

THE GERMAN AMBASSADOR (MALTZAN) TO THE SECRETARY OF STATE (KELLOGG)

[Translation]

GERMAN EMBASSY,
Washington, D. C., December 9, 1926.

In your note of May 4, 1926, your excellency set forth in considerable detail the legal position of the Government of the United States concerning the release of German property and added that the handling in practice of the question is to be kept separate from the legal position and that the Congress of the United States, for which the decision concerning German property must be reserved, is now considering the question.

In view of that explanation my Government would, although its legal position differs from that stated in the note, refrain for the present from a discussion of

the diverging legal positions and confine itself to expressing the hope that the deliberations of this Congress will arrive at some practical result that will be satisfactory to the nationals concerned on both sides.

Accept, etc.,

MALTZAN.

Senator JONES of New Mexico. It was the contention of our State Department that the acceptance, through the Paris agreement, of the 2½ per cent had nothing whatsoever to do with the question as between the United States and Germany. That as between those two Governments, the rights of the parties were fixed by the Berlin treaty, and that what we got through the Paris agreement, which gave us 2½ per cent, was a mere accommodation of the subject by our associates in the war, and that Germany in no sense was a party to it, and that it did not modify the Berlin treaty.

Senator EDGE. Additional insurance, as it were.

Senator JONES of New Mexico. Additional insurance. And I think it would be conceded by every one that the State Department, through the Paris agreement or any other agreement, would have no authority to change a treaty which existed between this Government and Germany.

The CHAIRMAN. Well, Senator, that question was not involved in the bill as it passed the House.

Senator JONES of New Mexico. That question is in a sense involved in the bill.

The CHAIRMAN. I can not see that it is involved in the bill at all.

Senator JONES of New Mexico. And I may state here that the German Government has not agreed to this House bill, and the German Government has insisted that all this property shall be returned.

The CHAIRMAN. Well, we do not have to take into consideration what the German Government wants, or demands. The property is in our hands, and we are going to dispose of it in some way.

Senator JONES of New Mexico. Well, I agree with you, but you were saying that the House bill did not take that into consideration. What I am trying to impress is that the House bill is simply an agreement between private parties, and so far as anything of record is known the German Government is still insisting that all this property shall be returned, and is not consenting to the House bill. I do not think that we are bound to pay any attention to what Germany has to say regarding the matter.

The CHAIRMAN. None whatever. Senator Jones, do you want to ask Secretary Winston any further questions?

Senator JONES of New Mexico. Yes; I have been waiting for the opportunity.

Senator EDGE. I was going to suggest—I tried to once or twice—that in view of the uncertainty, generally admitted, of the continuation of the 2½ per cent under the Dawes plan, and in view of the discussion here which has brought out the fact quite clearly that the German claimants are preferred in the distribution under the bill to American claimants, I would like to see the necessary amendments prepared in such form that they can be before the committee, so that we can give them further consideration, that would remove that discrimination, either putting the American and German claimants on a basis of 50-50, or giving the American claimants absolutely first preference.

Senator JONES of New Mexico. And would the Senator include in that the claims allowed by the Mixed Claims Commission to the Government of the United States?

Senator EDGE. Yes, certainly, to the Government of the United States as well as the claims allowed to the citizens.

Senator JONES of New Mexico. And would the Senator also include in that the fact that under the Winslow bill there has already been returned to German claimants about \$50,000,000?

Senator REED of Pennsylvania. We do not have to include that in an amendment.

Senator EDGE. We know that as a matter of information, but I am trying to get definitely drawn the necessary amendments which would prepare this bill in such form that we could remove those inequalities, if we agree that they exist. I would like to see it in such form.

Senator JONES of New Mexico. And another point. Would the Senator from New Jersey put the claimants of the ships and patents on the same basis of payments as the other German claimants?

Senator REED of Pennsylvania. Senator Jones, the owners of the ships, once the value of the ships is fixed, are not treated as well as the owners of the other property.

Senator JONES of New Mexico. Why shouldn't they be?

Senator REED of Pennsylvania. Because the 50 per cent is withheld from them.

Senator JONES of New Mexico. Why shouldn't they be?

Senator REED of Pennsylvania. I do not know what the reason was, but they seem to be satisfied not to be.

Senator JONES of New Mexico. Well, if I may hazard a surmise, I think it was upon the theory that \$100,000,000 would ultimately be appropriated, and if they got \$50,000,000, they were getting more than they were entitled to.

Senator SHORTRIDGE. Mr. Chairman, may I ask this question for the record? Have we now in possession ample property in value to satisfy all the legitimate claims of our nationals and the claims of our Government?

Undersecretary WINSTON. We have just about that. The estimate of the property in our possession is \$250,000,000.

Senator SHORTRIDGE. Yes.

Undersecretary WINSTON. The estimate of the claims is between \$240,000,000 and \$250,000,000.

Senator SHORTRIDGE. Well now, has not Germany agreed solemnly in treaty that we may apply that property in satisfaction of the claims of our nationals?

Undersecretary WINSTON. No question.

The CHAIRMAN. Senator, I am quite sure that it would be absolutely impossible to pass a bill or amend this bill to carry out your thought there and the House agree to it. What we want to do is this: We ought to take into consideration at this time legislation that we can get action upon here, and if it does not clean it all up, why let us clean up as much of it as we can. I think the suggestion made by Senator Reed of Pennsylvania, changing that 20 per cent to 40 per cent, perhaps, would meet the situation better than anything else that has been suggested here as far as our American claimants are concerned.

Senator JONES of New Mexico. Well, if the Senator will just stop and think for a minute he will find that that does not get us very far. It only puts into the pot an additional \$40,000,000.

Senator REED of Pennsylvania. May I make this suggestion to Mr. Alvord, who has prepared the language of this bill, as I understand it. Will you prepare for the consideration of the committee such amendments as these: First, a change from 20 per cent to 40 per cent in the amount retained from the German claimants generally. Next, a provision that the German ships taken by the United States shall be paid for at their value as ascertained by the Naval Commission of 1917. Next, that the owners of those ships shall be compensated on that basis in the same manner as other German claimants. Do you catch my idea? That having estimated the ships at the basis of the appraisal of 1917, then those German claimants shall be put in with the 60-40 per cent arrangement of other German claimants. And finally, a provision that after American claimants have received their 80 per cent, and after German claimants shall have received 80 per cent, then the United States shall participate in respect to its claim of \$60,000,000 on an equality with all those who share in the remaining payments. Is that lucid?

Mr. ALVORD. Yes.

Senator REED of Pennsylvania. I do not know where that will leave you in the matter of finance, but I think those amendments are worth considering.

Senator EDGE. That brings it to the 50-50 per cent basis that we are discussing, will it not, Senator?

Senator REED of Pennsylvania. Yes

The CHAIRMAN. You want the 2 1/4 per cent then to apply on the balances that will be shown by these changes just the same as it is under the provisions of the bill.

Senator REED of Pennsylvania. Well, substantially it is this, that every private individual in both nations shall have received 80 per cent, thereafter in getting the 20 per cent they shall share equally with the United States Government in the payment of its \$60,000,000 claim.

The CHAIRMAN. That is, every claimant who has a claim over and above \$100,000.

Senator REED of Pennsylvania. Yes.

Undersecretary WINSTON. May I make one suggestion with respect to using an arbitrary figure; I mean fixing the report of the Navy as the amount of compensation for the ships. We took something over 600,000 tons of ships. The Navy valuation is about \$50 a ton. The actual valuation of ships on the world market at that time was over \$100 a ton. If we fix what is not the value of those ships, but some arbitrary figure, will not the Allies be in a position to say that we have retained a portion of these ships or their value, and that portion must be credited against Germany's reparations under the agreement made by Mr. Hughes with Mr. Chamberlain in the notes which are of record.

Senator JONES of New Mexico. My reply to that is this, that under the Berlin treaty this property is to be disposed of according to the laws of the United States, and anything that the Congress may do

in the matter under the Berlin treaty becomes an absolute settlement of the question.

Undersecretary WINSTON. Maybe with the property, but not with the ships.

Senator REED of Pennsylvania. I think that the answer to that is this, Senator, that if we take them at an appraisal made contemporaneously it does not lie in the mouths of the Allies to say or to try to prove that that was not a fair appraisal. And when you contrast the value per ton allowed by the Navy with the going market value in the world at that time, there are two factors that ought to be taken into consideration. One is that the market value for ships of \$100 per ton was based on ships in fit condition, and these ships were rendered unfit, so that many of them required the expenditure of millions of dollars to put into condition. And in the next place these were interned ships which did not have the world market value to their owners.

Undersecretary WINSTON. That is the point, and I think we may come down to a value of approximately what the Navy applied. But if you take an appraisement made by a department of our own Government on ships that we were taking and make that value conclusive, then we can not say to the Allies that we have paid the real value of these ships.

Senator REED of Pennsylvania. Of course we can. We can say the value was ascertained in this way. How can they come and say that our Navy was corrupt in its estimate?

Undersecretary WINSTON. Well, just look at the proposition that there is a \$50 per ton valuation and the world's market at that time was \$115 per ton, and then take into account the deductions for putting those ships into commission, which will never bring them down to \$50 a ton.

Senator REED of Pennsylvania. Do you think not?

Undersecretary WINSTON. Oh, no.

Senator SHORTRIDGE. What was the condition that the ships were in?

Senator REED of Pennsylvania. Everything that could be smashed was smashed.

Senator SHORTRIDGE. Well, so it depends on the actual condition that they were in whether they were worth \$50 or \$100 a ton.

Senator HARRISON. They thought they did destroy the ships.

Senator REED of Pennsylvania. They thought they had destroyed the ships. The cylinders were cracked and electrical machinery destroyed.

Undersecretary WINSTON. I should say the fact of fixing the value arbitrarily, which would permit the Allies to say that the difference between that arbitrary value and the real value must be taken from your 2½ per cent reparations, will be simply to deprive the American claimants of getting anything out of the reparations.

Senator MCLEAN. England must have taken some German ships. How did she appraise their value?

Undersecretary WINSTON. They took the ships, and, as I recall, one was at about \$62 a ton and one \$86 a ton.

Senator MCLEAN. Yes; and they were not destroyed. They were in good condition, were they not?

Undersecretary WINSTON. That was the value of the ships after the armistice. They were credited to that amount.

Senator MCLEAN. They were in seagoing condition.

Senator GERRY. Those were new ships building, were they not?

Senator MCLEAN. Yes; in good condition, seagoing ships, and they were appraised at only \$10 a ton more.

Senator BAYARD. What are we going to do in the face of the book published by Ambassador Bernstorff in which he says that under his orders from the German Government these ships were put out of commission?

Undersecretary WINSTON. I am not saying that we pay for those ships a cent more than they were worth. All I say is that you should not fix an arbitrary value on them, but you should let this valuation of the Navy go in as *prima facie* evidence, and if it can be established that the ships in the condition that they were then to their then owners were worth more than that, why let us give them that value.

Senator JONES of New Mexico. I suggest at this point there be inserted in the record the quotation from Bernstorff's book just referred to by the Senator from Delaware.

(The following was presented by Senator Bayard for the record:)

These reports are confirmed in Count von Bernstorff's book, *My Three Years in America*, in which he recounts the incidents during the time he was German Ambassador to the United States. In this book, Count von Bernstorff refers to the matter of disabling German ships by order of his Government as follows:

"On January 31, at 5 o'clock in the afternoon, I handed Mr. Lansing the official communication about the U-boat war. This was my last political interview in America. We both knew that the end had come, but we did not admit the fact to each other. The Secretary of State contented himself with replying that he would submit my communication to the President. I cherished no illusions regarding the expected outcome of this interview, for the ultimatum of April 18, 1916, no longer allowed of any chance of preventing the rupture of diplomatic relations. Consequently, on the morning of the 31st of January I had already given the order that the engines of all ships lying in American harbors were to be destroyed. I had already been given instructions to this effect at the time of the *Sussex* crisis, and these instructions had now been repeated from Berlin. As a matter of fact it was dangerous to allow of any delay, for on the evening of January 31, our ships were already seized by the American police. As far as I know, however, all of them, without exception, were made unfit for use before this occurred."

The CHAIRMAN. I want to say that England did not get just those two ships that he speaks of here. All of those ships were turned over to the Allies and valued at 745,000,000 gold marks. And they were distributed to the Allies, and England got her proportion. It was stated here the two ships were valued.

Undersecretary WINSTON. I am saying two valuations, not two ships.

The CHAIRMAN. Two valuations, not two ships; yes.

Senator GERRY. But two of the main ships that England got were in perfect condition, and they were not completed when she got them.

The CHAIRMAN. England got many ships, and they were valued at \$62 and eighty some odd dollars per ton.

Senator GERRY. Yes; but she did not get ships that had been put out of commission by Germany on purpose to prevent their use, which is what we did in the liners we took over here, and some of the largest ones.

Now, I would like to ask another question there and see if I am straight on the record. As I understand, Mr. Winston, these claims are only claims that have been settled by the Mixed Claims Commission, and that commission has never been agreed to by the Senate, and they set an arbitrary date, did they not, in which claims had to be handed in?

Senator REED of Pennsylvania. No; that was set by notes exchanged between our ambassador to Germany and the German chancellor on August 10, 1922. The date when the Mixed Claims agreement was signed these notes were passed, and one of the agreements in those notes was that all claims to be considered must be presented within six months of the first meeting of the commission, which happened to come on October 9, 1922.

Senator GERRY. Now, as I understand it, that Mixed Claims Commission was not agreed to by the Senate

Senator REED of Pennsylvania. No.

Senator GERRY. Therefore it is not official to that extent.

Senator REED of Pennsylvania. Oh, yes; I think it is within the President's right to create it.

Senator GERRY. It is a question of whether it is or not, I think. I think there is that question.

Senator HARRISON. Mr. Chairman, while amendments are being suggested I think just striking out section 2 would get at the proposition, but I would like for some thought to be given to how you modify it, to take it out from the proposition that we are declaring a traditional policy of the Government which is contrary to the Berlin treaty.

Senator JONES of New Mexico. It seems to me that there is no occasion here to declare any national policy at all, and therefore in my judgment section 2 of the bill should be stricken out absolutely.

Senator REED of Pennsylvania. What do you see to be the necessity of section 2, Mr. Winston?

Undersecretary WINSTON. That I would think would be to meet in part the complaint that the Allies may make that we are actually taking some of this property. We negative that by declaring that we propose to return it, and we propose to pay for these ships. It may also be to meet the objections of an element in Congress that feels we should return this property at once and should not use it at all in aid of paying American claimants.

Senator REED of Pennsylvania. I can see how it would be some slight help to us in meeting the claim of the Allies that we had paid American claims, and therefore were no longer entitled to the 2½ per cent, but I can see also that it would be extremely embarrassing in future years if we have other wars.

Senator JONES of New Mexico. And the Allies can not in my judgment make any complaint regarding any disposition that we will make of this property.

Senator SHORTRIDGE. What right have they to make complaint?

Senator REED of Pennsylvania. Because they are giving us 2½ per cent out of their pool.

Senator SHORTRIDGE. Well, if we pay our nationals and our Government then we could certainly retire from the 2½ per cent.

Undersecretary WINSTON. That is all they ask us to do.

Senator JONES of New Mexico. Clearly under the Berlin treaty we are authorized to dispose of this property in any way we see fit and apply the proceeds in any way we see fit, so far as the Allies or the German Government are concerned.

Senator REED of Pennsylvania. One more suggestion, Mr. Alvord. I can see that the amendments that I outlined to you would probably create a fund in this special deposit account that would not be sufficient to comply with the intentions as to immediate payments. Will you also prepare an alternative amendment to the effect that the first \$50,000,000 found to be due for ships, patents, and radio stations taken by the Government shall be deposited in this special deposit account. The bill as it stands provides for 50 per cent of it being put in. My idea is that the first \$50,000,000 should go in.

Senator BAYARD. Rather than a percentage.

Senator REED of Pennsylvania. Rather than a percentage.

Mr. ALVORD. For distribution in the order that the bill states?

Senator REED of Pennsylvania. Yes.

Senator JONES of New Mexico. Well, I think the ship claimants ought to be put on the same basis as other property claimants.

Senator REED of Pennsylvania. It would appear so to me, Senator, but it appears that the claimants themselves have agreed that they should not be, and it appears to me that if we were to put them on the same basis then our special deposit fund will not be big enough to take care of the necessities of the bill.

Mr. ALVORD. May I suggest to Senator Reed, these proposed amendments will require rewriting of a considerable part of the bill, and it would take a considerable time to do it.

Senator REED of Pennsylvania. So that we ought not to meet to-morrow for that. Mr. Chairman, Mr. Alvord, who has very kindly consented to prepare these amendments, says that he can not do it between now and the meeting to-morrow morning, so I suggest that we might adjourn until such time as he reports to you that he is ready to submit them.

The CHAIRMAN. Well, I suppose there are other questions here involved in this bill that we can go on with. Senator Jones, you wanted some witnesses called here, did you? And we can go on with those witnesses, I suppose.

Senator JONES of New Mexico. Well, I am simply one member of the committee. And I did not or have not undertaken to assume the burden, or directing the course of testimony which this committee will take. I do not know now what the chairman of the committee has in mind, but I think there are several facts that ought to be made much clearer than they have been made. If the chairman of the committee and the majority of the committee are willing to stop the investigation here, why that I would like to know. But if the chairman thinks that we should have any more facts I think that they should be developed under his direction.

The CHAIRMAN. Well, I want to know the wishes of any member of the committee, and if they want any particular person here to testify I want them to have that chance. Now, as far as the chairman is concerned the witnesses that have been here have given the information, as far as they could here, that I thought that the committee would want beyond the question of a doubt. Now there

may be other witnesses, but I haven't them in mind, unless it is Mr. Bonynge. I think Mr. Bonynge ought to be heard.

Senator HARRISON. Who is he, the attorney?

The CHAIRMAN. No; he is the American agent. I think he ought to be heard, and we can go on with him to-morrow. If we could go on to-morrow with Mr. Bonynge, and perhaps some of the members of the committee would like to hear from the Alien Property Custodian, Senator Sutherland. And that is all I had in mind, Senator. But if you have anybody else?

Senator HARRISON. What is the matter with the representative who is representing these German claimants and the attorney that represents all the American claimants?

Senator JONES of New Mexico. If there has been any agreement regarding any legislation, I think this committee ought to know what the agreement is and who made it.

The CHAIRMAN. Well, I read it to the committee, Senator, and I will hand it to you now. I do not believe you were here, though, at the time. But you can take this letter if you want to. It was given to me in confidence, and I read it to the committee.

Senator ERNST. Why not have the people come before us that made the agreement?

Senator JONES of New Mexico. I do not think we ought to have anything in confidence here. I do not want to know anything which I can not tell to the Senate and to the country. I do not want any confidential information. And if that letter is in confidence I do not care to read it.

The CHAIRMAN. Congressman Green sent it to me in confidence.

Senator HARRISON. Well, is there any objection to having the representative of these German interests and the representative of the American claimants before the committee to see what kind of an agreement they have got?

The CHAIRMAN. Well, if the committee wants to ask them to come here, I will be glad to do it.

Senator JONES of New Mexico. Well, so far as I am individually concerned, I am not willing to legislate on any agreement between any parties, so far as that is concerned.

The CHAIRMAN. Yes, that is what you have stated.

Senator JONES of New Mexico. And declare the policy of the United States.

Senator ERNST. I don't think there has been any agreement. I think they have reached the conclusion that that is the best they can do, and are willing to have it accepted and disposed of. I think there is nothing beyond that.

The CHAIRMAN. I think that is all there is to it, but of course that would be an agreement.

Senator JONES of New Mexico. Well, I do not want to settle this thing on the mere question of think. I believe we ought to have facts here and out in the open so that everybody may know just what there is behind anything we do.

Senator ERNST. Mr. Chairman, I suggest you send for the chairman of the American Claims Commission.

The CHAIRMAN. Well, we will have Mr. Bonynge here to-morrow and then Senator Sutherland. And then I will ask also the representatives of the claimants to be here.

Senator JONES of New Mexico. I would like to request that some accountant of the Treasury Department be delegated to make an estimate of the time when the United States could get its claim paid under the provisions of the bill as it passed the House, and instead of using \$50,000,000 for the payment of these claims use only \$25,000,000. You will observe that in the report of the Ways and Means Committee they use \$50,000,000 there in the payment of these American claimants out of the Treasury or the ship money. I mean in the estimate which is given by the Ways and Means Committee.

Undersecretary WINSTON. You want that continued, Senator, so as to show the payment of the \$60,000,000 of American claims?

Senator JONES of New Mexico. Here you have got \$25,000,000 in this \$104,000,000.

Undersecretary WINSTON. I understand.

Senator JONES of New Mexico. And here you have got the other \$25,000,000. But do not include this second \$25,000,000.

Undersecretary WINSTON. I will have that done for you. That was done in my office.

Senator JONES of New Mexico. And run it on through so as to show when the United States claims will be paid.

Senator GERRY. Mr. Chairman, while we are arranging for these hearings, I am getting a great many protests from claimants who say that they had not sufficient notice to file their claims within the six-months' period, and I think we ought to have a representative of theirs appear before the committee.

The CHAIRMAN. Well, what could they say?

Senator GERRY. Well, I want to hear what they could say, Senator.

The CHAIRMAN. Well, we all acknowledge that. There isn't any doubt but what there are claims here.

Senator JONES of New Mexico. I have requested the State Department to furnish us with a list of those people so that we may know the amount of their claims which are being pressed.

Senator GERRY. And then, later, if we want to have the commission's view of it we can summon one of them to appear.

Senator JONES of New Mexico. I think you are quite right. They ought to have a hearing before the committee.

Senator GERRY. I think they are entitled to the hearing so the committee can have some information on it itself.

The CHAIRMAN. The committee will stand adjourned until 10 o'clock to-morrow morning.

(Thereupon, at 11.50 a. m., an adjournment was taken until 10 o'clock a. m. the next day, Wednesday, January 12, 1927.)

RETURN OF ALIEN PROPERTY

WEDNESDAY, JANUARY 12, 1927

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

The committee met, pursuant to adjournment on yesterday, at 10.30 o'clock a. m., in Room 312, Senate Office Building, Senator Reed Smoot (chairman) presiding.

Present: Senators Smooth (chairman), McLean, Curtis, Reed of Pennsylvania, Ernst, Wadsworth, Shortridge, Jones of New Mexico, Gerry, Harrison, Bayard, and George.

Also present: Hon. R. W. Bonynge, American agent before the Mixed Claims Commission; William P. Sidley, attorney at law, representing the American War Claims Association and others; Hon. Howard Sutherland, Alien Property Custodian; Dr. J. W. Kiesselbach, German commissioner on the Mixed Claims Commission, and Dr. Karl von Lewinski, German agent before the Mixed Claims Commission.

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

STATEMENT OF HON. GARRARD B. WINSTON, UNDERSECRETARY (IN CHARGE OF FISCAL OFFICES), DEPARTMENT OF THE TREASURY—Continued

The CHAIRMAN. The figures that the committee asked you for, Mr. Winston, yesterday, will be out how soon?

Undersecretary WINSTON. I think we ought to have them to-day.

Senator JONES of New Mexico. I will ask you, Mr. Winston, if you know anything about the claims against Austria?

Undersecretary WINSTON. Only to the extent that I have talked the matter over with the Austrian minister. It was referred to me by the State Department.

Senator JONES of New Mexico. What condition is that in?

Undersecretary WINSTON. The period of limitations for filing of those claims ends in the latter part of this month, and until those claims are all in it is difficult to come to an accurate estimate of what the amount of claims may be.

Senator JONES of New Mexico. Well, are they being adjusted by a separate commission?

Undersecretary WINSTON. Yes.

Senator JONES of New Mexico. When was that created?

Undersecretary WINSTON. Mr. Bonynge, do you know?

Mr. BONYNGE. I think it was in September of last year. Probably the year before.

Senator JONES of New Mexico. Well, that is under a different treaty, is it?

Undersecretary WINSTON. It is under an arrangement between Austria and the United States.

Senator JONES of New Mexico. What do you understand that arrangement to be?

Undersecretary WINSTON. I have not seen that.

Mr. BONYNGE. Similar to the German one.

Senator REED of Pennsylvania. It was signed November 26, 1924; ratified by the President August 4, 1925; ratified by Austria August 25, 1925; ratified by Hungary November 5, 1925. Ratifications were exchanged December 12, 1925.

Senator JONES of New Mexico. I would like to insert in the record at this point the provisions of those treaties relating to the settlement of private claims.

The CHAIRMAN. Of Austria and Hungary?

Senator JONES of New Mexico. Of Austria and Hungary. I believe we have no treaty with Bulgaria, and we are working on the treaty with Turkey now.

Undersecretary WINSTON. I have never heard of any claims against those two nations.

Senator JONES of New Mexico. Well, there is a separate treaty with Hungary also?

Undersecretary WINSTON. This includes Hungary. This is a tripartite agreement.

The CHAIRMAN. If the Lausanne treaty passes, then, of course, the State Department would immediately provide for a claims commission to settle whatever claims there may be between the two Governments.

Senator JONES of New Mexico. Well, the point I was wanting to get of record is if there is any provision in the Lausanne treaty for the settlement of claims against Turkey, and I would like to have the provision inserted in the record so far as it relates to settlement of these claims.

The CHAIRMAN. I think there is in this present Lausanne treaty a provision.

Senator JONES of New Mexico. I was not sure about it.

Senator REED of Pennsylvania. You asked me whether there was a separate treaty with Hungary. There was such a treaty made at Budapest in 1921. It was proclaimed by the President on December 20, 1921. The treaty with Austria was made at Vienna at the same time, and was proclaimed November 17, 1921.

Senator JONES of New Mexico. Well, I would like inserted in the record the provisions of that treaty so far as it relates to the private property rights in the settlement of private claims. And I would like the agreement between the United States and Austria and Hungary, the tripartite agreement, Treaty Series, No. 730, inserted.

The CHAIRMAN. Senator Jones, I am told that this treaty is in exactly the same terms as the treaty of Versailles in providing therefor, and all the other treaties that have been agreed to by our Government.

Senator JONES of New Mexico. Well, that is what I wanted to have appear.

The CHAIRMAN. The Knox-Porter resolution is incorporated in each one of them.

Senator JONES of New Mexico. Well, if that is true it probably will not be necessary to insert these provisions separately. Suppose you make the statement about these other treaties.

Mr. PHENIX. The treaty of Berlin and the treaty with Austria and the treaty with Hungary establishing friendly relations with those three Governments contain mutatis mutandis the same provisions regarding the settlement of claims and the reparation obligations of these Governments.

Senator JONES of New Mexico. And the return of property, etc.?

Mr. PHENIX. The treaty of Versailles, the treaty of Trianon, and the treaty of St. Germain have identical provisions with respect to the property rights of the allied and associated Governments against those Governments.

The CHAIRMAN. So there would be no necessity of putting it in.

Senator JONES of New Mexico. No necessity then to copy those provisions in. And, Mr. Bonynge, I suppose you will be able to tell us something about the amount of the claims filed?

Mr. BONYNGE. Yes.

The CHAIRMAN. That is what we had Mr. Bonynge here for.

Senator JONES of New Mexico. Then I will ask that there be placed in the record only the agreement between the United States and Austria-Hungary.

(The agreement between the United States and Austria-Hungary, Treaty Series, No. 730, is here printed in the record in full, as follows:)

TREATY SERIES, NO. 730.—AGREEMENT BETWEEN THE UNITED STATES AND AUSTRIA AND HUNGARY FOR THE DETERMINATION OF THE AMOUNTS TO BE PAID BY AUSTRIA AND BY HUNGARY IN SATISFACTION OF THEIR OBLIGATIONS UNDER THE TREATIES CONCLUDED BY THE UNITED STATES WITH AUSTRIA ON AUGUST 24, 1921, AND WITH HUNGARY ON AUGUST 29, 1921.

Signed at Washington, November 26, 1924.

Ratified by the President, August 4, 1925.

Ratified by Austria, August 25, 1925.

Ratified by Hungary, November 5, 1925.

Ratifications exchanged at Washington, December 12, 1925.

The United States of America and the Republic of Austria, hereafter described as Austria, and the Kingdom of Hungary, hereafter described as Hungary, being desirous of determining the amounts to be paid by Austria and by Hungary in satisfaction of their obligations under the treaties concluded by the United States with Austria on August 24, 1921, and with Hungary on August 29, 1921, which secure to the United States and its nationals rights specified under a Joint Resolution of the Congress of the United States of July 2, 1921, including rights under the Treaties of St. Germain-en-Laye and Trianon, respectively, have resolved to submit the questions for decision to a commissioner and have appointed as their plenipotentiaries to sign an agreement for that purpose:

The President of the United States of America, Charles Evans Hughes, Secretary of State of the United States of America.

The President of the Federal Republic of Austria, Mr. Edgar L. G. Prochn'k, Chargé d'Affaires of Austria in Washington, and

The Governor of Hungary, Count László Széchényi, Envoy Extraordinary and Minister Plenipotentiary of Hungary to the United States,

Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

The three Governments shall agree upon the selection of a commissioner who shall pass upon all claims for losses, damages, or injuries suffered by the United States or its nationals embraced within the terms of the treaty of August 24, 1921, between the United States and Austria and/or the treaty of August 29, 1921, between the United States and Hungary, and/or the Treaties of St. Germain-en-Laye and/or Trianon, and shall determine the amounts to be paid to the United States by Austria and by Hungary in satisfaction of all such claims (excluding those falling within paragraphs 5, 6, and 7 of Annex I to Section I of Part VIII of both the Treaty of St. Germain-en-Laye and the treaty of Trianon) and including the following categories:

(1) Claims of American citizens arising since July 31, 1914, in respect of damage to or seizure of their property, rights, and interests, including any company or association in which they are interested, within the territories of either the former Austrian Empire or the former Kingdom of Hungary as they respectively existed on August 1, 1914;

(2) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to or death of persons, or with respect to property, right, and interests, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

(3) Debts owing to American citizens by the Austrian and/or the Hungarian Governments or by their nationals.

ARTICLE II

Should the commissioner for any cause be unable to discharge his functions, a successor shall be chosen in the same manner that he was selected. The commissioner shall hold a session at Washington within two months after the coming into force of the present agreement. He may fix the time and the place of subsequent sessions according to convenience. All claims shall be presented to the commissioner within one year from the date on which he holds the first session required by the foregoing provision.

ARTICLE III

The commissioner shall cause to be kept an accurate record of the questions and cases submitted and correct minutes of proceedings. To this end each of the Governments may appoint a secretary, and these secretaries shall act together as joint secretaries and shall be subject to the direction of the commissioner.

ARTICLE IV

The three Governments may designate agents and counsel who may present oral or written arguments to the commissioner under such conditions as he may prescribe.

The commissioner shall receive and consider all written statements or documents which may be presented to him, in accordance with rules which he may prescribe, by or on behalf of the respective Governments in support of or in answer to any claim.

The Governments of Austria and Hungary shall be notified of all claims filed with the commissioner and shall be given such period of time as the commissioner shall by rule determine in which to answer any claim filed.

The decisions of the commissioner shall be accepted as final and binding upon the three Governments.

ARTICLE V

Each Government shall pay its own expenses, including the compensation of the secretary appointed by it and that of its agent and counsel. All other expenses which by their nature are a charge on the three Governments, including the compensation of the commissioner and such employees as he may appoint to assist him in the performance of his duties, shall be borne one-half by the Government of the United States and one-half by the Governments of Austria and Hungary in equal moieties.

ARTICLE VI

This agreement shall be ratified in accordance with the constitutional forms of the contracting parties and shall come into force on the date of the exchange of ratifications.

In faith whereof the above-named plenipotentiaries have signed the present agreement and have hereunto affixed their seals.

Done, in triplicate, at the city of Washington this 26th day of November, 1924.

CHARLES EVANS HUGHES. [SEAL.]
EDGAR PROCHNIK. [SEAL.]
LÁSZLÓ SZÉCHÉNYI. [SEAL.]

Senator JONES of New Mexico. Now, Mr. Winston, have you taken up the question of the settlement of these claims against Austria and Hungary in any way?

Undersecretary WINSTON. By reference from the State Department I have seen the Austrian minister. I have also met informally the Hungarian minister. The Austrian minister was anxious to have his claims included in this bill. The Hungarian minister said he did not wish the Hungarian property included in this bill. The Hungarian minister took the position that until this commission had met and there was some idea as to the amount of the claims that we were in the dark and could not act intelligently.

Senator JONES of New Mexico. Now, you said you had those interviews by reference from the State Department. What sort of reference was that? In what form was it?

Undersecretary WINSTON. Why, it was simply advice from the State Department. As I recall now, the Austrian minister took it up with the State Department, and they asked him to come over and talk to me.

Senator JONES of New Mexico. And how did your connection with respect to the German claims arise?

Undersecretary WINSTON. After Mr. Miller resigned as Alien Property Custodian and Mr. Hicks came in I was in very close consultation with Mr. Hicks on the policies of the alien property custodian, particularly in getting all of this property into the hands of one bank, into the Federal reserve banks, instead of being scattered all over the country, and in getting these bank accounts centered in the Treasury where they belonged, and through that acquaintance with him and through the discussion of his difficulties we came to the conclusion in the Treasury that something ought to be done to settle these questions. They ought not to be left open indefinitely.

Senator JONES of New Mexico. You say "we came to the conclusion in the Treasury."

Undersecretary WINSTON. That is, Mr. Mellon and myself.

Senator JONES of New Mexico. And that was the manner in which the whole question was virtually transferred from the State Department to the Treasury Department, was it?

Undersecretary WINSTON. That is the reason why we got into it.

Senator BAYARD. Was that transfer, Mr. Winston, by letter or verbally?

Undersecretary WINSTON. Nothing except that there did not seem to be anybody taking the lead, and as we saw these questions we tried to find the solution for them.

Senator BAYARD. In other words, a matter of oral conversation?

Undersecretary WINSTON. It was a matter of just somebody doing it, that was all.

Senator BAYARD. But you are not answering my question, please. Was it done by authorization from the State Department by letter or by word of mouth?

Undersecretary WINSTON. No; the State Department felt by their attitude that they had no more jurisdiction over it than we did. They were not in charge of the Alien Property Custodian.

Senator JONES of New Mexico. But they were in charge of the creation of the Mixed Claims Commission and the ascertainment of the amount of claims, etc., were they not?

Undersecretary WINSTON. They were in charge of that, but when you come to the payment of the claims, that is more a Treasury matter than a State Department matter.

The CHAIRMAN. Well, you were deeply interested in the Mills bill, were you not?

Undersecretary WINSTON. We drew the Mills bill.

The CHAIRMAN. Yes. You were connected with that. And in that connection I suppose the Austrian ambassador came to you and asked that his claims be incorporated in the bill, and became interested in the legislation?

Undersecretary WINSTON. Yes, but Senator Jones is talking about the original legislation, that is, the original German legislation, as I understood his inquiry.

The CHAIRMAN. I thought the Senator was asking about the Austrian.

Senator JONES of New Mexico. No, I had reference to the legislation in Congress regarding the settlement of these claims.

Undersecretary WINSTON. Yes, that is what I mean.

Senator JONES of New Mexico. Yes.

Undersecretary WINSTON. The Treasury was receiving reparation payments from abroad, and also the payments on account of the army costs, and as those came in with no disposition of them by Congress we wanted to settle that question. That, together with our close relationship to the Alien Property Custodian, was the reason why we took the initiative in this legislation.

Senator BAYARD. As far as the Alien Property Custodian was concerned, you were merely a bailee to hold the moneys deposited by him in the Treasury Department, were you not?

Undersecretary WINSTON. We were only that, but there was a close personal relationship in asking our advice by Mr. Hicks, and it was at our advice that the audit of Mr. McCarl was made and the bank accounts were concentrated in the Treasury instead of being scattered throughout the country, and the property in the hands of the various bailees, trust companies, were centered in the fiscal agent of the Government, the Federal reserve bank.

Senator JONES of New Mexico. I think that is all.

The CHAIRMAN. That is all, thank you, Mr. Winston. Mr. Sidley.

STATEMENT OF WILLIAM P. SIDLEY, CHAIRMAN OF THE EXECUTIVE COMMITTEE REPRESENTING AMERICAN CLAIMANTS, CHICAGO, ILL.

The CHAIRMAN. Give your full name and address to the reporter, please.

Mr. SIDLEY. William P. Sidley, Chicago.

The CHAIRMAN. What position do you hold in relation to the claims under the pending measure?

Mr. SIDLEY. I am the chairman of the committee, of the executive committee of nine, a voluntary group which came together two or three years ago, representing the large majority of the American claimants, and acting on behalf of all these American claimants to keep them advised of the progress of events in connection with the allowance and payment of their claims.

The CHAIRMAN. As chairman of the committee of nine?

Mr. SIDLEY. As chairman of the committee of nine; yes.

The CHAIRMAN. Do you know the names of the others?

Mr. SIDLEY. Yes.

The CHAIRMAN. Can you name them?

Mr. SIDLEY. Mr. Fred I. Kent, New York; Mr. Winthrop Aldrich, New York; and Mr. Oscar Houston, New York; Mr. Roland S. Morris, of Philadelphia; Mr. Clarence M. Brown, of Philadelphia; Mr. Klein, of New York; Mr. Betts, of New York; Frank L. Polk; and myself.

The CHAIRMAN. How was that organization first started?

Mr. SIDLEY. Well, I suppose I was responsible for starting it. I had a claim, a large claim, involving the injuries to a manufacturing plant in Belgium, and I found that there were two or three other people who were in the same situation—this was some years ago—and we talked these matters over from time to time. We had to go abroad and investigate the matters, and in that way we came together. And later, as the matter began to be discussed somewhat in Congress, perhaps two or three years ago it first came up, we were a good deal concerned because there seemed to be relatively little attention given to the subject of the American claimants' rights. The interest seemed to be centered largely on what should be done with the alien-property fund, and it seemed to us that the rights of the American claimants perhaps were apt to be overlooked in the general consideration, and so we decided we would see if we could get a group of the claimants into some kind of an informal association where we could consult together from time to time and be ready when some such occasion as has now arisen should come up, to be able to speak for the claimants as a whole.

The CHAIRMAN. Did the claimants appoint the committee?

Mr. SIDLEY. Yes; the claimants. We got the names of the claimants from the office here in Washington, and we sent out notices to several hundred of them, saying that we thought we ought to form an organization for our mutual information and protection, and we called a meeting, and they came together in very considerable numbers, and the matter was laid before them, and they decided that they had better have an executive committee, which should be in session between meetings of the claimants, and they appointed

that time—I think the original committee was six, with power to add to their number, and we added three more after the original appointments were made.

The CHAIRMAN. Were those meetings held in Chicago?

Mr. SIDLEY. No; those meetings were held in New York, because most of the interests were in the east here. And we have had meetings from time to time, and have sent out reports to the claimants, and then when matters began to be active here in Washington we came down before the committee. A year ago I think. Well, first I think we came in when that Winslow bill was before Congress. And we were invited then to come and appear. I appeared and one or two others and made statements as to the interests of these American claimants.

Senator REED of Pennsylvania. Did you protest against the Winslow bill?

Mr. SIDLEY. We raised the point before the Winslow bill that the principle of it did not seem to be quite consistent, that they should turn back a part of the funds and not turn back the whole. We felt that the whole fund ought to be kept as security under the Berlin treaty. But they pointed out that there was only a portion of it, 10 per cent, going to be turned back, and that there would be ample funds left to take care of all the American claims, and we were satisfied with that situation. All we were interested in was that the funds should not be released until the claims had been taken care of. But they were interested more in finding out who we were and what the nature of our claims were, and that is what we went down for, not to protest but to inform the committee as to our situation.

Senator REED of Pennsylvania. That 10 per cent proved to be an underestimate, did it not?

Mr. SIDLEY. An underestimate of what, Senator?

Senator REED of Pennsylvania. Of the proportion of property which was returned. About \$50,000,000 was returned, and there remains something like \$208,000,000.

Mr. SIDLEY. Well, I am in error in speaking of 10 per cent. The Winslow bill provided that amounts up to \$10,000 should be returned. I think it figured probably more than 10 per cent.

Senator REED of Pennsylvania. It was about 20 per cent of the bulk of the property.

Mr. SIDLEY. Oh, yes; it would figure more than 10 per cent. But there seemed to be ample funds retained for the protection of any American claims which might result, so the matter went through without very much opposition, as I remember. X

The CHAIRMAN. You appeared before the Ways and Means Committee on the pending bill?

Mr. SIDLEY. Yes; I was there in November of last year.

The CHAIRMAN. Did you approve of the bill?

Mr. SIDLEY. Well, we felt it was the best bill that under the circumstances could be secured, and we gave our consent so far as we could give anything.

The CHAIRMAN. And that was satisfactory to the claimants that you represent?

Mr. SIDLEY. Yes; on the whole it was satisfactory. Of course we had asked that our claims be paid in full. On the other hand, the Germans are apparently asking that the whole alien property fund

be returned without condition. The things had come to apparently an impasse, and it was indicated that each side would have to make concessions if any legislation was going through, and so we decided that we would.

Senator JONES of New Mexico. Indicated by whom, Mr. Sidley?

Mr. SIDLEY. Well, it was indicated by Chairman Green of the committee after the hearings were over. He made a statement that you gentlemen perhaps are familiar with—I was not here at the time, but he has communicated to me—in which he said that it seemed quite obvious that the German and the American claimants could not both get what they wanted, and that there would have to be some sort of concessions made on both sides if anything was to be brought out of the hearings before the committee. And he communicated that fact to me. I learned of it through people who were here, and I think he made a statement at the close of the hearings to that effect. It seemed to be quite obvious that concessions would have to be made on both sides if anything was to be brought out in the shape of a bill which was to go through Congress. And so our committee met here in Washington, went over the situation and felt that we ought to make concessions as far as reasonable and possible. We hoped that we would get paid in full in the end, but we felt that if we could get part of our payments now and some satisfactory assurance that we would in the end have our full amounts, that that ought to be accepted.

Senator JONES of New Mexico. Did you hope or expect that you would be paid out of the German property?

Mr. SIDLEY. No; we did not expect we would be paid out of the German property; that is, out of the alien property fund, you mean?

Senator JONES of New Mexico. Yes.

Mr. SIDLEY. No.

Senator JONES of New Mexico. From what source did you expect to get paid?

Mr. SIDLEY. Well, we expected that advances would be made to the American claimants out of a fund which was to be made up in various ways, which was indicated by Mr. Green. The fund would consist of partly the amounts which had already been received under the Dawes plan payments, which I think were expected to amount to some \$14,000,000 by next September. And then there were some unallocated interests in the Treasury in connection with the alien property fund which it was felt would be applicable to this advance payment to the Americans. Then a part of the German alien property fund was to be temporarily withheld and applied into this fund. And then there was some money that probably would be paid to the shipowners, radio station people, and patent owners, and a part of that was to be paid into the fund, and the final payment postponed to the Germans on that, which would make a sufficient amount to pay a certain percentage, 60 per cent or more initial payment to the American claimants, and then later as the Dawes plan annuities came in from time to time they were to be applied until the American claimants were paid, I think it was 80 per cent.

Senator JONES of New Mexico. Well, you have just recited what are the principal features of the bill passed by the House.

Mr. SIDLEY. Yes. Of course we had nothing to do with the drafting of the bill, and we did not know until it was drafted and we

saw it just what those terms were going to be, but in a general way we understood that some provision of that sort would be worked out, and Mr. Green so indicated in the statement which he made.

Senator JONES of New Mexico. Well, you did not expect then that the Treasury of the United States would have to bear any part of this burden?

Mr. SIDLEY. No; we were given to understand that that was not possible. Under the Mills bill the Treasury was to advance this money in the first instance, but it became apparent that there was such opposition to any money being advanced which might fall upon the American taxpayer that it was very clearly indicated that some other plan would have to be adopted by this committee.

Senator JONES of New Mexico. If the effect of this bill as passed by the House is to put a burden upon the Treasury of the United States, is it your view that there should be some modification of it?

Mr. SIDLEY. Well, I would not say, Senator, that we would suggest that there should be a modification in that regard, because while we did not expect that to take place yet we did favor the Mills bill. We thought that that was a proper measure at the time, although it did apply an advance from the American Treasury which might in part in time be ultimately borne by the country. And our view as a committee was that if it should become necessary in order to pay these American claimants in full that some portion of it should be paid from the Treasury, that it would be a just and proper measure to do.

Senator JONES of New Mexico. And there are numerous American citizens who have claims against the Government of Mexico. Do you think that there should be a call upon the Treasury for the payment of those claims?

Mr. SIDLEY. Well, I am not posted on those claims, Senator. I will be glad to go further into my view on the matter if you desire to have it.

Senator JONES of New Mexico. Well, that is what I am trying to get at.

Senator REED of Pennsylvania. Tell us first your personal relationship to this. Are you counsel for some company that had a factory there?

Mr. SIDLEY. Yes; I am the general counsel of the Western Electric Co. The Western Electric Co. had a large plant in Belgium, which it owned. That plant was seized by the Germans as soon as they got into Antwerp, and it was practically wrecked. They took off very large amounts of material and shipped them to Germany. They made use of the property and injured it very seriously. And, of course, the plant was out of commission until after the armistice. And they requisitioned all the goods that they could use, and they inflicted very large injury upon the company. It became necessary after the war to arrange for proving up this claim which was put in, and I went over there on two or three occasions to accomplish that, and we finally had an allowance of the claim, which was practically 80 per cent of all that we claimed for the German Government.

Senator REED of Pennsylvania. What is the amount of your award?

Mr. SIDLEY. The amount was in round numbers \$1,600,000. We claimed about \$2,000,000, I think, altogether for injuries of one kind

and another. They disallowed portions of it and granted the rest. I am not here, you understand, Senator Jones, advocating the payment of these claims out of the Treasury. The proper place for the payment in the first instance is in Germany, if that is possible. That was our view of the matter, because they inflicted the injuries upon us.

Senator JONES of New Mexico. Well, certain portions of the German property in the United States are to be used, at any rate temporarily, for payment of part of these American claims. Upon what theory do you make your contention that any part of this German property should be used for the payment of American claims?

Mr. SIDLEY. The Alien property fund stands pledged under the Berlin treaty as security for the payment of American claims; that is, it is to be held by the United States until Germany shall have made suitable provision for the payments of American claims. We had always contended that the funds should not be returned to Germany and should not be released until that had been carried out, until the provision had been made for the payment of the American claims. And so we have always argued that the funds should not be unconditionally returned without taking care of the American claimants. We have felt that if the provision is made for a portion of the claims being paid, that then enough only of the fund need to be retained until the balance has been disposed of, until actually we have been paid in full.

Senator JONES of New Mexico. Well, the Berlin treaty also provided, did it not, through the incorporation of the provisions of the Versailles treaty, that the Government of the United States might liquidate this property and pay American claimants?

Mr. SIDLEY. Yes; it so provides, if they wish to do so. It is up to Congress. That if they wish to do so they undoubtedly would have the legal right to do it, as the Supreme Court has held. But under the Berlin treaty, as it appears to me, the United States elected in the first instance to treat this alien property fund as a pledge, with the implication, of course, that after Germany had made due and suitable provision for the payment of the American claims, that it would be released. And of course that would be my expectation.

Senator JONES of New Mexico. Well, has any due and suitable provision been made?

Mr. SIDLEY. Not yet.

Senator JONES of New Mexico. Might it not be considered that the provisions of the Versailles treaty might be availed of as the suitable provision?

Mr. SIDLEY. Well, you mean that the funds should be applied to the payment of the American claimants?

Senator JONES of New Mexico. Yes.

Mr. SIDLEY. I do not think Congress would view it in that way.

Senator JONES of New Mexico. Well, I am not speaking about what Congress has done, but I am speaking about the contracts between the American Government and the German Government.

Mr. SIDLEY. My view upon that would be that inasmuch as the Versailles treaty terms were incorporated in the Berlin treaty along with this provision, that the United States should retain the alien

property fund until such time as Germany should make suitable provision, that it probably would not be interpreted that the United States felt that the application of that money was the due and suitable provision under the Versailles treaty terms, but that Germany would be expected in the future to make some provision to pay for these claims so as to recover back the alien property fund, it being meanwhile held as a pledge.

Senator JONES of New Mexico. And thus far Germany has taken no further steps regarding the matter?

Mr. SIDLEY. No; not as I know of. We have had an allowance of a very small percentage under the Paris distribution, but, of course, that was the action of the Allies.

Senator JONES of New Mexico. Yes. And in your opinion would that constitute a suitable provision?

Mr. SIDLEY. No. I would not consider it as such.

Senator REED of Pennsylvania. How long, in your judgment, ought we to hold this pledge before foreclosing on it, if Germany does nothing to make suitable provision?

Mr. SIDLEY. Well, that is a difficult question to answer in point of time. I should say that every liberality should be given in the treatment of Germany to enable it to make good on the payment of these claims, we holding, meanwhile, the fund until the Americans were paid in full.

Senator REED of Pennsylvania. Under the Dawes plan is not Germany precluded from making any such arrangement for direct payments to us?

Mr. SIDLEY. That is a question which I do not believe I can answer, Senator.

Senator REED of Pennsylvania. And if she is, then she could not make an agreement for direct payments until the completion of the Dawes plan payments, and they are indeterminate in duration. So that if we wait for her to make a direct contribution to us to satisfy those claims we will have to wait an indefinite time in the future.

Mr. SIDLEY. Well, of course, the expectation is that in the course of some years, under this plan which has been devised by the Green committee, that these annual payments which will be received from Germany will liquidate all of these claims and pay them in full.

Senator REED of Pennsylvania. Has your committee considered the claim of the United States Government against Germany for \$60,000,000?

Mr. SIDLEY. Well, we know that such a claim has been allowed; yes.

Senator REED of Pennsylvania. Was there anybody who participated in making this agreement who seemed to have that claim in mind?

Mr. SIDLEY. Well, I could not answer that. The only thing that I was interested in was in the American claimants' standpoint.

Senator REED of Pennsylvania. The individual American claimants?

Mr. SIDLEY. The American claimants' standpoint, yes. Not the United States standpoint.

The CHAIRMAN. Well, do you think that there is any possible chance of the Government of the United States ever getting the \$60,000,000 out of the 2 1/4 per cent of reparations provided for in the treaty?

Mr. SIDLEY. Yes.

The CHAIRMAN. Well, how many years do you think it will take?

Mr. SIDLEY. I do not know. I have not figured the time. It will be a considerable length of time before it will be done.

The CHAIRMAN. Over 20 years, would it not?

Mr. SIDLEY. Oh, yes; I should think so.

The CHAIRMAN. And you think that those reparations will be paid in 20 years?

Mr. SIDLEY. That is my personal view. I may be an optimist on Germany's resources.

Senator JONES of New Mexico. Under the report of the Ways and Means Committee of the House it is estimated that by the United States appropriating \$50,000,000 that that $2\frac{1}{4}$ per cent will, after a lapse of $26\frac{1}{3}$ years pay off the American claimants and half of the German claimants, but in the meantime nothing has been paid or provided for with respect to the \$60,000,000 due the American Government, and the interest on that for that period of years would more than double the amount of the claim, as I estimate it, and then how long would it take thereafter for the $2\frac{1}{4}$ per cent to liquidate that claim on behalf of the United States Government?

The CHAIRMAN. If interest was charged on it it would take about 75 years in my opinion.

Mr. SIDLEY. Well, are you asking me now with reference to subordinating the American Government claims?

Senator JONES of New Mexico. I wish to draw out the fact, Mr. Sidley, if it is a fact, and I think it is, that under this bill as it came from the House for all practical purposes no provision has been made for the payment of this \$60,000,000 to the United States Government. Is not that the way you would also construe the bill?

Mr. SIDLEY. Well, I would not construe it quite that way, Senator. The provisions are set up for the ultimate payment and application of these Dawes remittances to the United States.

Senator JONES of New Mexico. But under the bill as it came from the House there is no hope of the United States getting a dollar until after more than 26 years, is there?

Mr. SIDLEY. Well, I presume that is so. I have not in mind the length of time in which these private claims will be paid in full, but it will be after they have been paid that the United States will begin to receive its payments upon its own claim. And that I take it was upon the theory that it was proper for the United States Government to subordinate its claim to that of its citizens whom it represented in making these negotiations, and for whom it acted as trustee in its claims against Germany.

Senator JONES of New Mexico. If you believe that that is the proper disposition of the American claim I wish you would state why.

Mr. SIDLEY. One of the great functions of Government, one of the great duties of a nation is to look after the interests of its private citizens, to see that they are protected, and to repair wrong and injury which is done to them. That case arose in connection with the war. There were a good many hundred American citizens who suffered serious damage and injury, life, person, and property, in connection with the war. The only source to which they could look for reparation and indemnity was through the United States Government, and their claims were necessarily placed in the hands of the

United States Government for recovery. The same principle as though an American citizen had been injured in a foreign port by a foreign nation or by citizens of foreign nations, we would doubtless attempt to secure reparation for such a citizen, as we have done before.

Now, we were all in that situation. The United States was the representative of these individual citizens to secure proper reparation from Germany, and it undertook to do that. It did not enter into the Versailles treaty. It did not set up a clearing house. It took no steps for some time after the war to enforce any rights on behalf of its individual citizens. And finally opportunity came in connection with the Paris agreement after the Dawes plan had been set up, to secure satisfaction for its citizens. And it acted on their, behalf in so doing.

It also had a personal claim arising from commercial operations which it transacted in the way of insurance during the war, upon which it made a considerable sum of money.

Senator REED of Pennsylvania. It was subrogated to the insured in claims against Germany.

Mr. SIDLEY. Yes. That is how it came in in a private capacity.

Senator JONES of New Mexico. Well, that was not all of the claim, was it?

Mr. SIDLEY. Well, that was the principal amount, I should think. There were other ship losses and things of that kind, but as I recall it the large amount is in connection with the insurance bureau, etc., which was established. They were private claims of the United States in the sense of being allowed by the commission. And the United States then appeared at the Paris conference and made terms for the protection and indemnity of all the parties concerned—itself and the American citizens. And it also at the same time made provision for its own Army of occupation costs, which were a very large amount.

In that respect it took a preference to the claims of its own citizens whom it was representing at that time. I do not speak of this, gentlemen, in the way of complaint. You have asked me how in my mind this works out as a justification for treating the American claimants in this way. There was only a certain small percentage which was available for distribution to America at the Paris conference. The United States had a claim of some \$250,000,000 for Army of occupation costs. A fund which had once been paid in in such a way as to have made it available possibly for the United States if it had been pressed and collected. But it was not. At least that is the claim that is made.

And so we went in at that time to get that amount allowed, and also the amounts for these private Americans, and the United States then secured a preference on the Dawes plan payments for its \$250,000,000 of war claims, which was not only a preference, but it was cumulative. If not paid it was to bear interest.

And after it had thus provided for recovery of its own expenditures in that regard, it negotiated an arrangement by which $2\frac{1}{4}$ per cent of the reparations payments under the Dawes plan, after expenses and other large claims should be taken care of, should go to the American claimants. That was quite inadequate to take care

of what would be considered a reasonable payment and reparation to these Americans, because their claims amounted to such a total that the 2 1/4 per cent would hardly be more than the interest upon their claims which had been allowed by the Mixed Claims Commission, and I think it was figured at that time that it would take some 75 years for these American claims to be amortized, paid off in full, etc.

Senator JONES of New Mexico. And even that 75 years did not include the claim of the United States, did it?

Undersecretary WINSTON. It did.

Mr. SIDLEY. I think that did include all the claims.

The CHAIRMAN. Well, then, with the reparations of 2 1/4 per cent it would not pay them off with 5 per cent interest.

Senator JONES of New Mexico. If you allow interest on the American claims, including the United States claim, the 2 1/4 per cent is not sufficient to pay the annual interest is it?

Mr. SIDLEY. Well, it depends on the total amount.

Senator JONES of New Mexico. Well, the United States claim has been allowed of about \$60,000,000. The others are, in round figures, about \$180,000,000, making about \$240,000,000 all together. And they are bearing interest at 5 per cent per annum. We get under the 2 1/4 per cent \$10,700,000 a year. That would not be equivalent to the interest, would it, on all these claims amounting in round numbers to \$240,000,000?

Undersecretary WINSTON. I think in considering the \$240,000,000 as carrying interest at 5 per cent you are not quite right. The principal of the claims carry interest at 5 per cent, and the principal of the claims is less than \$240,000,000.

Senator JONES of New Mexico. How much less?

The CHAIRMAN. But how about the interest that has accumulated up to date?

Senator JONES of New Mexico. Well, we will go into that later. That is immaterial.

Mr. SIDLEY. Those are figures, gentlemen, that I do not carry in my mind. You evidently have them there. And you are asking me about general principles.

Senator JONES of New Mexico. Yes. Now, Mr. Sidley, you made reference to the fact that part of the United States claim arose out of commercial transactions. Is that not true of the claims of many of the individual American claimants?

Mr. SIDLEY. Oh, yes. I mention that to put them on the same basis, so far as commercial claims are concerned.

Senator JONES of New Mexico. Well, I rather construed your remark to mean otherwise—to indicate that that was one reason why the claim of the United States should be deferred.

Mr. SIDLEY. No, I was trying to show that in these allowances by the Mixed Claims Commission we were practically all on a similar basis. That is, it was a private claim, not an army cost claim.

Senator JONES of New Mexico. Then what argument could be made for deferring payments on the United States Government claim which would not apply to individual claimants of the United States?

Mr. SIDLEY. My feeling about that is that the United States where its own interests of this sort are concerned, where it can very con-

veniently carry a matter of this sort over a long period of years, should defer its claims to those of its wards, its citizens, the private citizens for whom it acts practically as a trustee and as an agent in asserting their rights and securing their indemnity, and thus between the two it would be proper that they should postpone their claim, it being, in my judgment, payable in full after a length of time.

Senator JONES of New Mexico. Upon what theory do you think the Government of the United States can carry a claim in a better way than an individual can carry a claim?

Mr. SIDLEY. Its resources are very much larger, and time to a government is not so important as years to an individual claimant. It could carry for 20 or 30 years or even 70 years a claim of this sort and with ultimate collection in sight, where it would be practically a denial of a payment to an individual who had a claim to be carried and extended over such a length of time as that.

Senator JONES of New Mexico. Well, would not that extension of time on the part of the Government become a burden upon the taxpayers of the country?

Mr. SIDLEY. Why, I do not know that it would any more than other debts which it has to carry from time to time. Claims and so forth.

Senator JONES of New Mexico. Certainly not, but do not all those debts of the Government have to be ultimately borne by the taxpayers of the country?

Mr. SIDLEY. Well, they do not have to be paid by the taxpayers of the country.

Senator JONES of New Mexico. Well, from what other source will the Government get money with which to pay?

Mr. SIDLEY. Well, I understand, and my theory of this proceeding is, that they would be paid from these German reparations which would come in under this Dawes plan which has been set up.

Senator JONES of New Mexico. Do you think that it would be considered much of a payment to defer this to 75 or 80 years?

Mr. SIDLEY. Well, I think it would be considered a payment of it.

Senator JONES of New Mexico. Why, you would not think much of that sort of a payment to yourself, would you?

Mr. SIDLEY. I certainly would not, because an individual is in no position to carry on a claim of that sort in the way that a government would be.

Senator JONES of New Mexico. Well, now, that was really a digression from the thought which I had in mind. Upon what do you base your claim that the Government of the United States should look after these claims of American citizens? Is it the Berlin treaty?

Mr. SIDLEY. You mean look after them to collect them?

Senator JONES of New Mexico. Yes; and to make sacrifices in order to collect them, such as it is doing under the bill as it came from the House?

Mr. SIDLEY. That is one of the purposes for which a Government is set up. For instance, if I may cite what is in my mind. There was a situation arose, I think during President Roosevelt's administration, with a gentleman in Africa by the name of Raisuli. There was an American injured over there, a private citizen. The United States did not stop to think of cost of asserting his rights and in

securing the indemnities. It cost money to send ships there. It was a considerable expense to go and assert the rights of that American on behalf of this country. But that was done. And his rights were asserted. And his release was secured, all at the expense of the American Government. Now, we can not stop in times when our private citizens are injured in a case like that, or in a case where we are drawn into a war which is not the making of a private citizen, and he has injuries inflicted upon him for which he should have redress.

It seems to me that one of the great purposes for which a Government is set up is to extend its power and backing for the individual protection of its citizens, and it should not stop anywhere to count the cost in that regard. And, therefore, I think that it was incumbent upon the Government of the United States at once after the war to enter into some arrangements for the satisfaction of the injuries which had been inflicted upon its own citizens. And it therefore entered into, finally, this treaty of Berlin.

Senator JONES of New Mexico. Well, the Government of the United States did not inflict those injuries, did it?

Mr. SIDLEY. No, it did not.

Senator JONES of New Mexico. Well now then, it would be your judgment that the Government of the United States should make some financial arrangement to pay for the claims which American citizens have against Mexico?

Mr. SIDLEY. No, I can not answer that because I do not know the circumstances under which the claims arose, Senator.

Senator JONES of New Mexico. Well, they are injuries inflicted upon American citizens and their property in Mexico.

Mr. SIDLEY. Yes. I think that America ought to assert up to the limit its authority to force Mexico under those conditions to make full and satisfactory and adequate payment of all these American claims. That is the first duty to the country.

The CHAIRMAN. We have a commission, have we not, there, for that purpose?

Senator JONES of New Mexico. Yes, we have.

Mr. SIDLEY. As I understand that is now in process.

Senator JONES of New Mexico. But no one apparently has ever assumed to consider the proposition that the Treasury of the United States should in any way be obligated to pay those claims of American citizens, has there, that you know of?

Mr. SIDLEY. I do not know that it has, and I understand, Senator, in this connection in the American claims it has been assumed that America would make these payments. It has been assumed that America would make advances to help its American citizens in the first instance, but always upon the theory that it would ultimately get back the amounts which it had so advanced.

Senator JONES of New Mexico. Well, if it turns out that that theory would not work out in practice then what have you to say about it?

Mr. SIDLEY. Well, I have no alternative to suggest beyond what is taken care of in this bill, Senator, because that goes upon the assumption, which I have always thought to be a correct one, that in the course of time the United States Government would be indemnified.

Senator JONES of New Mexico. Well, some of us have a different view of that.

Mr. SIDLEY. Yes.

Senator JONES of New Mexico. But is it not a fact that the reason why you have taken this means of collecting your claim is that the Government of the United States entered into the Berlin treaty and thus secured the right to use this property in the adjustment of the claims of American nationals? Is that not the theory on which you go?

Mr. SIDLEY. Well, which right do you refer to, Senator, under the Berlin treaty?

Senator JONES of New Mexico. All rights under the Berlin treaty. Is it not the basis of your claim that the Government of the United States, through the Berlin treaty, acquired an opportunity or the right to liquidate these claims, and that therefore your claim is really based upon that treaty and the provisions in there for the liquidation of American claims?

Mr. SIDLEY. Well, I do not know that I have ever thought of it in just that way. I have not assumed that the German property as such would be applied to the payment of these claims in the end.

Senator JONES of New Mexico. Well, now, if the effect of it is to do that, then you think your claims ought to be waived and this property turned back to the Germans?

Mr. SIDLEY. I do not. I think that the American claimants ought to be paid on one basis on some theory, they ought to be paid in full, and that the Government of the United States should see to it that those claims are paid in full.

Senator JONES of New Mexico. And that this property should either be liquidated or held as security for that payment?

Mr. SIDLEY. I think that this property should be held as security until the payment of those American claims has been effected in full. That is what I feel. And I feel that the United States should see that those claims are paid in full. That it should exhaust its efforts in every way to secure those payments from Germany or German interests, if that is possible to do. And I feel that the present plan, as I read the bill that comes from the House, is going to carry that into effect; that ultimately they will be paid in full and that the German property will be returned in full; and that all the claims will be taken care of over a considerable period of time.

Senator JONES of New Mexico. Well, some of us do not agree with that view, Mr. Sidley, and we think that the bill itself contemplates appropriation of the United States Treasury for a great deal more money than it should, and that the provision in that bill for the payment of the claim to the United States itself amounts to nothing more than a dream.

Mr. SIDLEY. Well, I just add this word, Senator, so that you may know my view upon the question. I think that these American claimants who have been injured in connection with the activities of our country in war, into which they were drawn necessarily and innocently, as all the American citizens were, that they have suffered loss in the common interest of the country, and that the United States as a Nation should see upon one theory or another that those sufferers are taken care of in the only way that is prescribed, and that

is by the indemnities which have been allotted to them. That if there is going to be a suffering that it should be borne by the country as a whole, and not by the handful of people who suffered during the war, and that therefore if it came to the last analysis, where it was impossible for the Government to secure from Germany, for some reason or another, the payment of this in full, that it would only be just that the nation as a whole, whose rights had been asserted in the war, in whose behalf as a nation these individuals had suffered loss of life and injury to property, that the country as a whole and not this group of people, should stand the payment of the loss which ensued.

Senator JONES of New Mexico. Then do I understand, Mr. Sidley, that if the payments under the Dawes reparations plan should cease within the next year or two, you would feel that the Government of the United States ought to in such event pay the balance of these American claims?

Mr. SIDLEY. I certainly do, assuming that she can not in any way secure such payments hereafter, assure such payments from German sources.

Senator GEORGE. Well, now, Mr. Sidley, you feel that way because we are letting go of property that we have in our hands? At bottom that is your conclusion, is it not?

Mr. SIDLEY. Yes. We certainly ought to in no circumstances turn back this property and release it to German owners and leave these Americans unsatisfied.

Senator GEORGE. Yes. Now permit me to ask this question. The injury to the special interests which you directly represent occurred long before we went into the war?

Mr. SIDLEY. Well, no, it occurred partly before we got in and principally afterwards.

Senator GEORGE. Well, in so far as it did occur before we went into the war it was not in consequence of your company aiding the United States, because we were not then in war?

Mr. SIDLEY. No.

Senator GEORGE. But subsequently we were drawn into it, of course. So your argument necessarily comes down to the proposition that we presently having had in hand property which was seized by the country, that when we let that property go finally, why the obligation is raised to pay the American claimants?

Mr. SIDLEY. Yes. I think, Senator, as I expressed, that there is a broader ground upon which to put the obligation.

Senator GEORGE. Yes; I understand you emphasized the broader ground and the paramount duty of the Government to protect the life and property of the citizens.

Mr. SIDLEY. Yes.

Senator GEORGE. But I do not understand that you would carry that theory to the extent of saying that for instance we should reimburse out of the public treasury where we had not been remiss in the proper prosecution of our claims, a citizen, for instance, who has suffered at the hands of the Mexican Government, if any have suffered, assuming that some have suffered, so therefore this particular case must necessarily rest not only on that broad doctrine, but primarily at least, upon the fact that we had in hand properties

that were seized, and that in some way we have allowed to go back to the owners?

Mr. SIDLEY. Yes. And I would say this further. The United States has elected to take a stand before the world which is different from that of other nations, which it regards as a high and generous attitude to take. It waived reparations against Germany in connection with the war, that is, it is generally known as reparations for injured soldiers and that sort of claim. It has taken the position that it did not desire to confiscate the property of private owners, of German private owners in connection with the war. It is in a sense an unusual attitude. It is a fine attitude to take. It is taken as a national attitude in behalf of all citizens of the United States. Now if it had taken the position that other nations had taken we would have had our claims paid in full long ago.

Senator GEORGE. Exactly.

Mr. SIDLEY. We would have gone in under the treaty of Versailles. We would have set up a clearing house. We would have taken the German property and applied it to the payment of American claims, as we had a legal right to do. Instead of taking advantage of its legal rights under the circumstances it elected, and I think it took a very high stand in so doing, on moral grounds—I think it was a stand which will redound to its advantage probably on commercial grounds—at any rate as a national position it decided that it would not enforce any of those rights in behalf of its private American citizens which other nations did. And I say, therefore, that when the country as a whole takes a position of that sort it ought to be at the national expense and not at the expense of the handful of claimants.

Senator GEORGE. I understand your position, and I am prepared to fully appreciate it. But let me ask you this question, Mr. Sidley, and I ask purely for information. I understand that your particular company, the Western Electric, was awarded \$1,600,000 approximately?

Mr. SIDLEY. Yes.

Senator GEORGE. Now I assume that that award does not include any profits, loss or profits?

Mr. SIDLEY. Oh, no; those were all cut out.

Senator GEORGE. Well, I assumed that, and I wished to know it, that is all.

Mr. SIDLEY. That was just simply for property sequestered, the property ruined and destroyed in connection with it.

Senator GEORGE. Well, I am not familiar with it, and I wished to know. And I presume that is true of all other claimants standing on the same basis as yourself?

Mr. SIDLEY. Yes; they are all on the same basis. There are no profits whatever involved in the allowances. Of course I have other claims. I had people who were lost on the *Laconia*.

Senator GEORGE. I understand, but I am speaking of claims that were similar to yours.

Mr. SIDLEY. Yes.

Senator GEORGE. And there were no profits involved in any of those judgments.

Senator JONES of New Mexico. Mr. Sidley, you said that this Government has elected to take some high moral ground which other

nations have not done. When and where did this Government so elect?

Mr. SIDLEY. Well, you will find in connection with the negotiation of the Berlin treaty, I think it is, in our Executive Department, which negotiated it, stated in substance at that time that it was not our intention to assert any claims against Germany under these general reparation classes—that is, insurance for soldiers and injuries of that kind. Those were all waived.

Senator JONES of New Mexico. By what authority was that statement made?

Mr. SIDLEY. I have seen the exchange, I think, of letters, which will be found in connection with the Berlin treaty, or possibly the setting up of the Mixed Claims Commission. I guess that was it.

The CHAIRMAN. That is what it was.

Mr. SIDLEY. There was an exchange of letters between the State Department and Germany.

Senator JONES of New Mexico. You are a lawyer, I understand?

Mr. SIDLEY. Yes.

Senator JONES of New Mexico. I would like to get your view as to the legality of any such arrangement made by the State Department.

Mr. SIDLEY. I am not a State counsellor, Senator, and I am not versed in international law of that character, and I would not undertake to give you an opinion on that, Senator. I assume from the fact that it was done it was assumed that it was in proper course.

Senator JONES of New Mexico. As I understand it, the State Department only assumed to assert that the United States would not press any claims under sections 5, 6, and 7 of the annex to section 297 of the Versailles treaty. But you spoke also of the Government having elected to take some other high position that would not use—to make a practical statement—German property in America here for the payment of American claims. When was the election to take that high position made?

Mr. SIDLEY. Well, as I recall it, the first selection was in connection with the Winslow Act, when we returned at that time up to 20 per cent—I think you said, at that time. That was an implication.

Senator JONES of New Mexico. Well, if that had constituted an election to do that, why did we not return it all at that time?

Mr. SIDLEY. I don't know. I never quite understood the consistencies of the Winslow Act.

Senator JONES of New Mexico. As a matter of fact, when the Winslow Act was passed did we not estimate that there would remain sufficient property to satisfy the American claims?

Mr. SIDLEY. I think that was done at the time. There were some expressions in that connection, however, which indicated the feeling of Congress at that time that the funds should ultimately be returned without any confiscation.

Senator JONES of New Mexico. Well, that was an expression simply of individual Members of Congress, was it not?

Mr. SIDLEY. Yes.

Senator JONES of New Mexico. And it did not enter into any legislation or resolution expressing any declared purpose of Congress.

Mr. SIDLEY. Well, now, I would say further, Senator, that this present existing bill, if it goes through, is an expression of that kind.

Senator JONES of New Mexico. I think you are quite right.

The CHAIRMAN. Paragraph 2 of the bill.

Senator JONES of New Mexico. Yes.

Mr. SIDLEY. Yes. Now I say that we are now considering the effect of pending legislation, and if this country elects by formal declaration, as it does in one of the paragraphs of the bill, to return in full this private property, that when that is accomplished then it has released what otherwise would have been a fund for application to American claims, what other countries have used for that purpose, and that in connection therefore with that act it would be no more than right that it should assure in some way to the American individual claimants that their claims should be paid in full, and that the attitude of the country as a whole should not be taken at their expense, but at the expense of the nation as a whole.

Senator JONES of New Mexico. But this committee is now considering the question of approval or disapproval of section 2 of the House bill, which does declare as you have just indicated, and it can not be said thus far that the Congress has made any declaration on the so-called high ground to which you have referred.

The CHAIRMAN. That grew up, did it not, Senator, in the minds of the people from the statement that was made by the President following the signing of the armistice? In his message to Congress did not President Wilson take that ground at that time?

Senator JONES of New Mexico. President Wilson certainly did not take that ground. On the other hand he helped frame the Versailles treaty, which definitely provided a very different ground.

The CHAIRMAN. Well, I have not read his messages which followed after that, but I think there was some high ground taken there. And I think the American people approved of it, too.

Senator JONES of New Mexico. I think you are referring to a very different thing than the provisions for the payment of American claims, because the Versailles treaty did provide for the payment of American claims out of German property in the United States.

Mr. SIDLEY. Yes; if they wanted to use it as such.

Senator JONES of New Mexico. Yes.

Mr. SIDLEY. Perhaps you could answer this, Senator. I do not recall just how it took place, but the United States certainly elected not to resort to the clearing house. Now, I do not know how that was done. That was used by other nations, and as the result of that private claims of those other nations were pretty generally paid.

Senator JONES of New Mexico. Yes.

Mr. SIDLEY. Now, in some way we waived our right to do that.

Senator JONES of New Mexico. The Government of the United States undoubtedly through inaction at least, waived the provision of the clearing house and waived its right to sit upon the reparations commission.

Mr. SIDLEY. It did.

Senator JONES of New Mexico. Two very important things, which I think the Government should have entered into, but it did not.

Senator REED of Pennsylvania. Have you had any payment on account of your claim whatsoever?

Mr. SIDLEY. No, not \$1.

Senator REED of Pennsylvania. I would like to ask you how much, under the bill as it comes from the House, will the Western Electric Co. receive at once on account of its claim of \$1,600,000?

Mr. SIDLEY. Well, it will depend I think a good deal on how much ship money goes into the common pot, as it is called. Now suppose \$50,000,000 is the total, and \$25,000,000 goes into there, and about perhaps \$40,000,000 from the alien property fund, say 20 per cent, I just guess at these figures, it would be \$65,000,000. Now, if \$25,000,000 went in from the unallocated interest account there would be \$90,000,000, and we think by September there will be about \$14,000,000 accumulated from the Dawes plan payments. That would be \$104,000,000. And assume that the total claims allowed, Mr. Bonynge, will reach \$175,000,000. I assume the total claims may reach \$175,000,000.

Undersecretary WINSTON. The estimate used in the House is \$179,000,000.

Mr. SIDLEY. Well, it is \$175,000,000 we will say for round figures. There will be one hundred one hundred and seventy-fifths. What will that be? Around 60 per cent?

Senator REED of Pennsylvania. It will be four-sevenths.

Mr. SIDLEY. Somewhere around there.

Senator REED of Pennsylvania. But some of the claims are paid in full.

Mr. SIDLEY. Now they won't get all that, because all claims up to \$100,000 will be paid in full, and \$100,000 will be paid on this theory on all claims over \$100,000. That will take \$20,000,000 or \$30,000,000, will it not?

Senator REED of Pennsylvania. According to the House it will take \$33,000,000.

Mr. SIDLEY. According to the House it will take \$33,000,000.

Senator REED of Pennsylvania. That will leave about \$70,000,000 for general distribution among the claims over \$100,000.

Mr. SIDLEY. Yes.

Senator REED of Pennsylvania. That is, \$70,000,000 applicable to awards totaling \$145,000,000.

Mr. SIDLEY. \$145,000,000.

Undersecretary WINSTON. It will take \$33,000,000.

Senator REED of Pennsylvania. Yes. That will leave \$70,000,000 in the special deposit fund for application against awards totaling \$145,000,000. It is approximately 50 per cent of the excess of the claims over \$100,000. So you will receive \$100,000 first, and then one-half of the remaining \$1,500,000.

Mr. SIDLEY. Yes.

Senator REED of Pennsylvania. You will get \$850,000 immediately under this plan.

The CHAIRMAN. Plus interest.

Senator REED of Pennsylvania. I am disregarding interest. Taking the sum total.

Mr. SIDLEY. Yes.

Senator REED of Pennsylvania. Then the balance of your claim will be paid through on the next six years, approximately, until you have received 80 per cent.

Mr. SIDLEY. Until we have received 80 per cent.

Senator REED of Pennsylvania. You will have to wait six years to have received 80 per cent?

Mr. SIDLEY. Yes.

Senator REED of Pennsylvania. Any German claimant, on the other hand, who has a claim of \$1,600,000 received \$10,000 under the Winslow Act, he has received all of his accrued earnings or interest since 1923, and he would at once receive 80 per cent when this bill passed. So that, taking two claimants for the same amount, one German and one American, it seems to me that the German receives very much more favorable treatment than the American.

Mr. SIDLEY. Well, he does on that basis receive more favorable treatment. Of course, the situation that I happen to be in representing this large company is partly my own fault, because the American claimants among themselves agreed that the injuries and loss of life and such of the small items should be paid in full. We realized, for one thing, the difficulty of paying in installments over small claims, and so we agreed, those that had the larger claims, that it was only just that the small ones should be paid in full, so that reduced a considerable portion of our claim, but even then we would have less than the Germans. But our chief interest there was that enough of the German property should be retained in hand so that ultimately we would be secured, and the amount which is to be retained would take care of us on that theory.

The CHAIRMAN. Do you remember how many claims there are exceeding the \$100,000?

Undersecretary WINSTON. One hundred and fifty-three awards over \$100,000.

The CHAIRMAN. I thought that was something near the number.

Mr. SIDLEY. Of course we started in with the idea of trying to get 80 per cent of our claims paid if the Germans get 80 per cent, but it seemed to be difficult to get the plan through, and so we conceded these arrangements they have worked out in this plan here upon the theory that ultimately we would get our money.

Senator REED of Pennsylvania. This is that much better than nothing, in other words?

Mr. SIDLEY. This is that much better than nothing, yes. And it seems possible that the prospects are good in the end for getting our money.

Senator JONES of New Mexico. Well, would you feel that your prospects were good if we would leave out section 2 of this bill as it passed the House?

The CHAIRMAN. The declaration of policy.

Mr. SIDLEY. The declaration of policy?

Senator JONES of New Mexico. Yes.

Mr. SIDLEY. Let me see—just what was in your mind there, Senator?

Senator JONES of New Mexico. What was in my mind was this. If you had to reply wholly upon the 2½ per cent which would come from the reparations commission and not upon any declared policy of the Government of the United States so as to have the Government incur no obligations along the lines which you were discussing a while ago, would the bill be then satisfactory to your people?

Senator REED of Pennsylvania. He has answered that in substance.

Mr. SIDLEY. I think so.

Senator REED of Pennsylvania. When he says he believes that the Dawes plan payments will be continued.

Mr. SIDLEY. Yes; I believe that the Dawes plan payments will be carried through, or a substitute. I do not know what will happen in the next few years, but I believe that Germany will be in a position to carry out those payments on some theory, even if they have to modify them.

Senator JONES of New Mexico. And you are willing to take your chances on that?

Mr. SIDLEY. I certainly am. We have to take them on that.

The CHAIRMAN. Well, striking out of section 2 of the bill then would have no effect at all on the position that you have taken in the past?

Mr. SIDLEY. Well, we have relied, as I have said before, upon these deferred payments coming in through the Dawes plan.

The CHAIRMAN. As provided in the bill?

Mr. SIDLEY. As provided in the bill. And it was no suggestion of ours, of course, that this declaration of policy be made. That was something that was introduced by the committee. And I am not so much concerned with the individual claimant with that policy, which probably was put in for good reason, but it was no suggestion of ours.

Senator JONES of New Mexico. Well, it has been stated, Mr. Sidley, that this bill is the result of an agreement. You have told us how the American claimants got together and the processes there. Did your committee have any agreement with anyone representing the German claimants?

Mr. SIDLEY. Well, I would not call it an agreement, but we finally conferred with them to see if we could meet on some common ground which would be satisfactory, upon which Mr. Green's committee would be satisfied, certainly along the lines that he had indicated in public statement at the close of the hearings.

Senator JONES of New Mexico. With whom did you confer?

Mr. SIDLEY. I conferred with Doctor Kiesselbach and Doctor von Lewinski, who were the representatives of the German interests here.

The CHAIRMAN. The same as you were of the American interests?

Mr. SIDLEY. The same as I was of the Americans; yes. And we had never been able to come to an agreement. We occasionally talked over these matters in connection with our claims, etc., but we had diametrically opposite positions apparently, which brought things to an impasse, because we wanted our claims paid in full; the Germans insisted that the alien property fund should be released in full unconditionally. And, of course, the two things could not very well exist.

After the close of the hearings Mr. Green made an announcement that he thought that the only change of getting legislation through was for both sides to make concessions, by which I think he indicated that perhaps 75 per cent might be paid and the balance withheld by each party and worked out over a period of years, and he was very anxious that we should see what could be done with our American claimants in that regard. And I had a talk with him upon that subject, and I called my committee together in Washington to see how far we felt we could go in making, in the first instance at any rate, concessions and getting a common basis upon which the com-

mittee could go to work. And after conferring together some of the German people wished to see what concessions we were willing to make, and we were interested in knowing what they were willing to make, and we had a meeting in Washington—I had a meeting with one or two members of my committee—with Doctor von Lewinski and Doctor Kiesselbach, and there was nothing in the nature of an agreement, because, of course, there was nothing that we could do which would be binding on anybody, but we did say that we were perfectly ready to tell Mr. Green, for the information of his committee, what concessions we thought we could stand in the way of getting a bill through. And at that time we discussed these terms which practically now have been worked into this bill, by which they would withhold temporarily 20 per cent of their alien property fund, and that half of the ship money would be temporarily withheld, and we should waive our rights to get our payments in full, and take what the deposit account would give us, and then in installments afterwards up to 80 per cent, when we would be then on the same basis as the German alien property people, and then we would go ahead on a basis by which we would prorate all payments which would come in later. And I communicated that, and I guess Doctor Kiesselbach did, too, to Mr. Green.

The CHAIRMAN. You signed a joint letter.

Mr. SIDLEY. We signed a joint letter to him in which he desired to know how far we had made concessions among ourselves, which he said would be only for the information of his committee, but he would like to know how far we could get on the matter, so we signed a paper which I delivered to him indicating what I have already stated.

Senator JONES of New Mexico. Do you know of any reason why that paper should not go into this record?

Mr. SIDLEY. I know of no reason whatever, sir. I gave it to Mr. Green just for his information and for the information of his committee.

The CHAIRMAN. And he submitted it to me, you know, in confidence, and I will ask Mr. Green if we can not put it in the record this afternoon.

Senator JONES of New Mexico. Well, I was going to ask Mr. Sidley if we might have a copy of it for this record here. I understand that that original letter has been sent over here in a confidential way, and I am not willing to consider anything in confidence in connection with this bill.

The CHAIRMAN. You have no objections to having it in the record?

Mr. SIDLEY. No; none whatever.

The CHAIRMAN. And Doctor Kiesselbach?

Doctor KIESSELBACH. No.

Mr. SIDLEY. It was given to Mr. Green at his request and for his information.

The CHAIRMAN. Then I do not think that Congressman Green will object, but I will ask him this afternoon, Senator, and if he does not object we will put it in the record at this point.

Senator JONES of New Mexico. And if he does object I would like for one or the other of these gentlemen to furnish this committee with a copy of the letter.

Mr. SIDLEY. Well, you will let me know if anything is wanted further in that regard?

The CHAIRMAN. Yes. Was there anything else?

Senator JONES of New Mexico. No.

(The letter addressed to Chairman Green, of the House Ways and Means Committee, from Mr. Sidley and Doctor Kiesselbach is here printed in the record in full, as follows:)

DECEMBER 1, 1926.

HON. WILLIAM R. GREEN,
*Chairman Ways and Means Committee,
House of Representatives.*

DEAR MR. GREEN: For your information and that of your committee in drafting proposed legislation, we note the following as a general basis of agreement between the American and German interests which we respectively represent:

1. Twenty per cent of the alien property fund to be temporarily retained and so invested in Dawes plan annuities as to become applicable to the immediate payment of American claims, the balance of the 80 per cent of the alien property fund to be promptly returned to the owners.
2. Fifty per cent of awards for payment of German ships, radio stations, patents, etc., to be likewise temporarily retained and applied to American claims as soon as it becomes available, and the balance of such awards distributed to ship owners, et al.
3. The \$26,000,000, approximately, of unallocated interest in the hands of the Treasury to be similarly applied to American claims.
4. The \$14,000,000, approximately, of Dawes plan payments received up to September, 1927, to be applied to the payment of American claims.
5. All funds in the hands of the Alien Property Custodian formerly belonging to the German Government, together with all funds so held the ownership of which is not disclosed within a period to be fixed in the bill, and thereafter established to be applied to the payment of American claims.
6. To the extent that the above payments on the American claims falls short of 80 per cent of the total amount of such claims, including interest thereon as awarded to January 1, 1927, the receipts from the Dawes plan payments accruing subsequent to September, 1927, to be first applied to payment thereof until such 80 per cent has been paid in full, and thereafter said receipts from the Dawes plan payments to be distributed ratably among the remaining unpaid claims of Americans, alien property claimants, and ship, radio, and patent claimants, together with 3½ per cent interest thereon, until they are paid in full; and thereafter these Dawes plan payments to be applied as they accrue to the payment of the \$26,000,000 of unallocated interest advances as aforesaid, together with 3½ per cent interest thereon until paid, thereafter the Dawes plan payments to be applied to the payment of the United States Government awards against Germany.

WILLIAM P. SIDLEY,
For the American Claimants.
W. KIESSELBACH,
For the German Claimants.

The CHAIRMAN. It is now 12 o'clock, and the committee will stand adjourned until 10 o'clock tomorrow morning.

(Thereupon, at 12 o'clock noon, an adjournment was taken until 10 o'clock a. m. the next day, Thursday, January 13, 1927.)

RETURN OF ALIEN PROPERTY

THURSDAY, JANUARY 13, 1927

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

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

Present: Senators Smoot (chairman), McLean, Curtis, Shortridge, Edge, Jones of New Mexico, Gerry, Harrison, and George.

Present also: Hon. R. W. Bonynge, American agent before the Mixed Claims Commission; Hon. Howard Sutherland, Alien Property Custodian; Dr. J. W. Kiesselbach, German commissioner on the Mixed Claims Commission; and Dr. Karl von Lewinski, German agent before the Mixed Claims Commission.

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

STATEMENT OF HON. ROBERT W. BONYNGE, AMERICAN AGENT, MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Mr. BONYNGE. Robert W. Bonynge. I am the agent of the United States before the Mixed Claims Commission, United States and Germany. And also the agent of the United States before the Tripartite Claims Commission, United States, Austria, and Hungary.

It has occurred to me, Senators, that perhaps if I should make a very general statement as to the character of claims that American nationals have under the Versailles treaty, and the method adopted under the treaty for the adjudication of those claims, that it might be helpful to the committee, and then explain the method adopted by the United States for the adjudication of those claims.

Senator JONES of New Mexico. I think it would.

Mr. BONYNGE. And in that connection I will, if you desire, explain how we arrived at the rate of 16 cents for the valorization of mark debts, and also make some statement in reference to the late claims, which I think are both matters which the committee desires some information on, and after I have completed the statement in reference to the German claims I will give you such information as I have relative to the Austrian claims.

Senator JONES of New Mexico. I think that is just what we want to hear from you.

The CHAIRMAN. Yes.

Mr. BONYNGE. Under the Versailles treaty and the provisions of that treaty that were incorporated into the Berlin treaty, and also into the treaty with Austria and the treaty with Hungary, there are,

generally speaking, two great subdivisions of claims that American nationals have. One class comes under what is known as Part VIII of the Versailles treaty. Those are what are termed the reparation claims. Under that part of the treaty there is one section, section 231, in which Germany admitted its liability for the war, and that she was liable for the consequences and the losses occasioned by the war. That was followed by section 232, by which the allied and associated powers recognized that Germany's resources were insufficient to compensate for all of the losses arising as a consequence of the war, and then under that section certain specific classes of claims are set forth for which Germany should be responsible. Those are stated in Annex I following article 244, and there are 10 different classes of claims, from 1 to 10. There are in those sections paragraphs 5, 6, and 7, which have been discussed here, being claims for pensions and for cost of assistance by the Governments of the allied and associated powers to prisoners of war and their families and dependents, and allowances by the Governments of the allied and associated powers to the families and dependents of mobilized persons.

These reparation claims, so-called, are claims that arose during belligerency, of course, after we entered the war.

In addition to the claims for reparations there are also the claims under section 10 of the Versailles treaty, which are the economic clauses of the treaty, and in that class of claims there are perhaps two principal subdivisions of claims that might be mentioned.

One is for debts, and they are provided for under Section III of Part X of the treaty, article 296, which specifies the debts for which Germany would be liable. And there are four different classes of debts mentioned. The first four subdivisions of article 296.

The CHAIRMAN. And what are they, briefly?

Mr. BONYNGE (reading) :

(1) Debts payable before the war and due by a national of one of the contracting powers, residing within its territory, to a national of an opposing power, residing within its territory;

(2) Debts which became payable during the war to nationals of one contracting power residing within its territory and arose out of transactions or contracts with the nationals of an opposing power, resident within its territory, of which the total or partial execution was suspended on account of the declaration of war;

(3) Interest which has accrued, due before and during the war, to a national of one of the contracting powers in respect of securities issued by an opposing power, provided that the payment of interest on such securities to the nationals of that power or to neutrals has not been suspended during the war;

(4) Capital sums which have become payable before and during the war to nationals of one of the contracting powers in respect of securities issued by one of the opposing powers, provided that the payment of such capital sums to nationals of that power or to neutrals has not been suspended during the war.

Mr. BONYNGE. The other class of claims mentioned in Article X are those provided for under section 297. Those are claims for damages to a national of an allied or associated power resulting from the application of an exceptional war measure by Germany to the property rights and interests of a national of the allied or associated powers.

Now, the method provided for by the treaty for the adjudication of these different classes of claims is different in reference to the repa-

ratios and in reference to the claims arising under the economic clauses of the treaty. For the reparation claims it was provided that there should be a reparation commission established by the selection of delegates from the countries signing the Versailles treaty, who would compose the Reparation Commission, and each of the Governments was to present to that Reparation Commission a statement of the amount of damages that it claimed under the reparation clauses of the treaty.

Senator JONES of New Mexico. Well, now, Mr. Bonynge, would that include more than the claims mentioned in sections 5, 6, and 7?

Mr. BONYNGE. Oh, it would include all the claims arising under Part VIII of the treaty. All the 10 different classes of claims mentioned under that section.

I should say, in reference to the reparation claims, that the allied and associated powers were to present to the Reparation Commission a statement of the amounts demanded for reparations under all those various 10 clauses specified in the section that I have referred to. Germany had an opportunity to examine the statements, but those statements of account were filed in a lump sum under the different classifications. There was no opportunity to Germany to examine individual cases; no hearing on individual cases.

The method provided for the adjudication and determination of the amount due under the economic clauses of the treaty was this: There it was provided in reference to the debts that there might be established clearing offices between Germany and the different allied and associated powers. Each country to have its own clearing office, and the debts to be reported by the nationals of each country to its own clearing office, and then at stated periods a balance struck and the payment made through the different clearing offices. And for the claims that arose for damages resulting from an application of exceptional war measures there was established by the treaty mixed arbitral tribunals, each country selecting a member of the tribunal, and then a provision for the selection of a president of the tribunal from a neutral power.

Those mixed arbitral tribunals determined the amount due to a national of an associated or an allied power for damages arising by reason of the application of an exceptional war measure to the property rights and interests of the national of one of the associated or allied powers. And that tribunal also had the authority in case the clearing offices disagreed as to whether a debt existed to settle that difference. There was, in fact, an appeal to the mixed arbitral tribunal.

Senator CURTIS. Was that the provision under which these people who purchased bonds before the war, that the payment of was stopped by Germany during the war, are to proceed to get their claims settled?

Mr. BONYNGE. They might come under the classification of debts or claims for damages due to an exceptional war measure. If the security matured during the war, or coupons upon the bonds matured during the war, then they became debts under article 296 and would be settled through the clearing office. If, on the other hand, they were claiming damages to their securities that were in Germany any subjected to an exceptional war measure, then they would

come before the Mixed Arbitral Tribunal, because it would not be a debt; it would be a claim for damages that they were seeking to recover by reason of the application of an exceptional war measure to their property. And later, if you desire, I will explain what is the position of the commission relative to the recovery for damages to securities that were subjected to an exceptional war measure.

The CHAIRMAN. I hope you will before you conclude.

Mr. BONYNGE. Yes; I will be very glad to do that.

Now, in reference to the debts, it was also provided by paragraph (d) of subdivision (4) of the same article, article 296 of Section III of the treaty of Versailles, that—

For the purpose of this provision the pre-war rate of exchange shall be defined as the average cable transfer rate prevailing in the allied or associated country concerned during the month immediately preceding the outbreak of war between the said country concerned and Germany.

Now, in the case of the United States, we entered the war on April 6, 1917. The average cable transfer rate prevailing in the United States during the month immediately preceding April—

The CHAIRMAN. The three months preceding?

Mr. BONYNGE. No, one month preceding; was 17.4 cents to the mark. Under this article 296 and the clearing office system both the associated or allied countries and Germany were to be responsible for the debts of their own nationals, and to valorize them at the rate as provided for in the treaty. The United States did not adopt the clearing-office system. There was a provision in the treaty by which within a certain time after the treaty was ratified each country was to elect whether it would adopt the clearing-office system or not. If it did not adopt the clearing-office system then the provisions are somewhat indefinite as to what was to be the rate of exchange that was to prevail. The United States did not adopt the clearing-office system.

Senator JONES of New Mexico. Do you know why, Mr. Bonyng?

Mr. BONYNGE. No; I have no way of knowing why. Excepting this, that my understanding has been that the United States at the time the treaty was under discussion at the peace conference declared that it did not desire to assume responsibility for the debts of its own nationals. It did not desire to valorize those debts. We had some Americans who owed debts to Germans payable in marks, and if we had adopted the clearing-office system we would have been obliged to valorize those debts the same as Germany was valorizing the debts to us.

The CHAIRMAN. On what basis did England and France and Italy settle?

Mr. BONYNGE. They adopted the clearing-office system.

The CHAIRMAN. But at what rate?

Mr. BONYNGE. Their rate would have been practically the normal rate, because one month preceding the time they entered the war the rate was practically normal.

The CHAIRMAN. Yes; 24 cents, in round figures.

Mr. BONYNGE. 23.8 cents. But in our case we did not enter the war until April, 1917, and by that time the mark had depreciated considerably, so that the best rate we could have possibly obtained would have been 17.4 cents to the mark.

The CHAIRMAN. And you finally decided on 16 cents?

Mr. BONYNGE. Yes; we did. And I will explain how that arose and why we made that compromise later.

Now, as we did not become parties to the Versailles treaty, of course we were not represented on the Reparation Commission. Neither did we have the clearing office. Neither did we have mixed arbitral tribunals. But our nationals had the right to recover for claims and damages of the character I have mentioned. And what I have said in reference to the Berlin treaty applies equally to the Austrian and to the Hungarian treaties. So that the executive departments, the State Department particularly, then negotiated an agreement with Germany setting up the Mixed Claims Commission in the case of Germany, to which was referred all of these various claims, the reparations claims and the claims arising under the economic clauses. There was no other machinery. The Mixed Claims Commission exercises all the jurisdiction over claims that either the Reparation Commission, the clearing office, or the mixed arbitral tribunals would have had.

And when the question came before our commission as to Germany's liability for debts, the issue immediately arose as to whether Germany was responsible for those debts. The contention of the German Government being, through its agent, that as we had not adopted the clearing-office system, and as that was a reciprocal arrangement by which each country was to be responsible for the debts of its own nationals, Germany was not responsible for those debts and not obliged to valorize them. Not directly responsible. Of course, there is a provision, which I will refer to a little later, that the property of its nationals in the United States was subject to a charge for such debts.

The American agent contended that under other sections of the treaty we were entitled to the same rate of exchange that was provided for in section 296, namely, the 17.4 cents, and briefs were prepared by both agents before the Mixed Claims Commission. The matter was pending before the commission for some time, and it looked rather dubious as to whether we would be able to maintain the position that I contended for, namely, that we were entitled to the 17.4 cents. And in any event, even though we should have been successful, it would have meant a very prolonged litigation before we got all of our claims settled, and great expense and trouble to our nationals.

The German agent then, on behalf of his Government and with the consent of his Government, proposed an amicable adjustment of this question of the rate of exchange in view of the contentions of the two parties and the difficulty in arriving at a solution, and one that would not only expedite the conclusions of the adjudication of these claims but save the American nationals a great deal of time and expense in establishing their claims. He proposed that a rate of exchange at the rate of 16 cents be adopted for the debts provided for in section 296, and that Germany would, notwithstanding the fact that we had not adopted the clearing-office system, assume direct liability for those debts.

The CHAIRMAN. Did they have any other reason why they did not make it 17.4 cents? Simply because we were not assuming the liability?

Mr. BONYNGE. Simply that we were not assuming the liability for the debts of our nationals, and that the provisions of the treaty were reciprocal.

I submitted that proposition to quite a number of the American nationals who had claims of or debts payable in marks, and they approve it. They thought it was a fair, just, and amicable arrangement for the settlement of the debts.

I then submitted the proposition to the State Department, and the State Department, after considerable consideration, approved the agreement, and that is the way in which we arrived at the 16 cents. It was in the nature of a compromise. And in addition to the 16 cents under that arrangement we also got interest on the debts from January 1, 1920, which was by way of a compromise at the rate of 5 per cent.

It was a very important settlement, particularly for our bank deposits, because as you notice from reading the character of debts specified in the treaty it would have been necessary to establish that the debt matured during the war. Now, a bank deposit ordinarily does not mature until a demand is made for the bank deposit. We would have great difficulty in establishing as a debt that the bank deposit has matured during the war. But under this agreement all bank balances were to be valorized at this same rate of 16 cents to the mark. And all that we had to establish was the amount of the bank balance as it existed on April 6, 1917, and then we added to that any appropriate debits or credits after April 6 during the war that arose out of pre-war transactions, and added the interest that matured up to April 6, 1917, and then interest was suspended from that time until January 1, 1920, and from January 1, 1920, to the date of payment we got 5 per cent upon such amounts. So that I regarded it as a very fair and just arrangement, and one very advantageous to the American nationals, and the American nationals have been extremely well satisfied with it.

Senator JONES of New Mexico. How did you arrive at the date of January 1, 1920?

Mr. BONYNGE. That was really an arbitrary date.

Senator McLEAN. Under the six months' limitation there were some American claimants that did not file their claims.

Mr. BONYNGE. I will speak about the six months' limitation a little later.

Now in reference to the lien on the property of the German nationals in the possession of the United States or any of the allied powers, subdivision 4 following article 298, being an annex to article 297 of the treaty, reads as follows, and this is a very important section in connection with the consideration of this bill:

All property, rights, and interests of German nationals within the territory of any allied or associated power and the net proceeds of their sale, liquidation, or other dealing therewith may be charged by that allied or associated power in the first place with payment of amounts due in respect of claims by the nationals of that allied or associated power with regard to their property, rights, and interests, including companies and associations in which they are interested, in German territory, or debts owing to them by German nationals, and with payment of claims growing out of acts committed by the German Government or by any German authorities since July 31, 1914, and before that allied or associated power entered into the war.

Now it will be observed, Senators, that the lien, therefore, on the property in the possession of the Alien Property Custodian was for the claims in regard to the property rights and interests of our nationals, and those are the claims that are mentioned in the economic clause. They are not the reparation claims. So that the property in the possession of the Alien Property Custodian is not charged with the lien for reparation claims, but only for claims arising under the economic clause of the treaty. And it will be further observed that this provision does not charge the property of nationals in the possession of the Alien Property Custodian with a lien for claims of the Government of the United States, but only for the claims of the nationals of the United States growing out of damage to their property, rights and interests; namely, the economic clause of the treaty. Only indirectly would there be any lien on that property for reparation claims.

There is a subsequent section of this same paragraph that I have not completed reading:

The amount of such claims may be assessed by an arbitrator appointed by Mr. Gustave Ador, if he is willing, or if no such appointment is made by him, by an arbitrator appointed by the mixed arbitral tribunal provided for in Section VI. They may be charged in the second place with payment of the amounts due in respect of claims by the nationals of such allied or associated power with regard to their property, rights, and interests in the territory of other enemy powers, in so far as those claims are otherwise unsatisfied.

That is to say, that if there were any unsatisfied claims of the character mentioned against such enemy powers, then the property of Germany might be charged with the payment of such claims.

Senator JONES of New Mexico. Would you construe that to mean that we should exhaust our ability to collect claims against the German allies from other sources before we could take advantage of the agreement of Germany to pay that?

Mr. BONYNGE. I should think so; yes. If they remained unsatisfied after we had exhausted all our remedies against the others, then the German property would be subject to a lien for that remaining unsatisfied portion of such claims.

Senator JONES of New Mexico. Yes.

Mr. BONYNGE. There is also another provision of the treaty that if there should be a balance remaining after the payment of all these claims of the nationals arising under this clause, then that balance should be a credit in favor of Germany on its reparation payments. The reparation payments were to be made to the Reparation Commission, and that balance would, under the Versailles treaty as it stood, be turned over to the Reparation Commission, and then by subsequent agreement between the Powers the total fund in the possession of the Reparation Commission was divided up between the allied powers in certain proportions.

Senator JONES of New Mexico. Now, let me understand. This property is first to be used to liquidate the claims of American nationals?

Mr. BONYNGE. Growing out of the economic clause of the treaty...

Senator JONES of New Mexico. Growing out of the economic clause of the treaty?

Mr. BONYNGE. Yes; of the economic clause. It may be used for that purpose. It is chargeable with that.

Senator JONES of New Mexico. Yes; I understand. And then if there is anything left that may be used then for the satisfaction of what you call reparations?

Mr. BONYNGE. May be turned over to the Reparation Commission.

Senator JONES of New Mexico. Which would include the claims of the Government of the United States itself?

Mr. BONYNGE. If it made any claims for reparations; yes.

Senator JONES of New Mexico. Yes.

Mr. BONYNGE. Yes; if it made any claims for reparations.

Senator JONES of New Mexico. Would this allowance of \$60,000,000 to the Government of the United States come within the claims for reparations thus provided for?

Mr. BONYNGE. Yes, it would. Yes, they were all reparations claims. But we would not have gotten that money. Under the provisions of the Versailles treaty it would have gone into the reparation fund, but it would have been divided up between the allied and associated powers. France would have gotten 52 per cent of it. There is no fund now being paid to the Reparation Commission, and no government in the world has turned over any surplus to the Reparation Commission. Not a single government. Now all money that arises for reparations goes to the reparations representative—I do not know what the official title is—the representative under the Dawes plan. And it is divided among the allied powers. If we got any portion of it we would get 2½ per cent under the Dawes plan of any of that money that was turned over, and the rest of it would go to France, Great Britain, Italy, and the other countries.

Senator JONES of New Mexico. Well, now let me get this clear. What claim has the United States against any of the assets of German nationals or of Germany for the payment of the \$60,000,000 which has been allowed by the Mixed Claims Commission?

Mr. BONYNGE. If there is any German property, meaning the property of the German Government, in our possession, we would have certainly the right to retain that property.

The CHAIRMAN. That is German property.

Mr. BONYNGE. Yes.

The CHAIRMAN. But not the property of the German nationals.

Mr. BONYNGE. But not under the treaty the property of the German nationals, no.

Senator JONES of New Mexico. Anything else?

Mr. BONYNGE. I do not know of anything else except our rights under this bill.

Senator CURTIS. No; generally speaking.

Senator JONES of New Mexico. No; under the treaty.

Mr. BONYNGE. No.

The CHAIRMAN. There are ships.

Mr. BONYNGE. Those, I understand, were not the property of the German Government. The ships were the property of the German nationals. They belonged to German companies, not to the German Government.

The CHAIRMAN. Well, what German property have we then?

Mr. BONYNGE. I do not know. There was some money that belonged to the German Government that is in the possession of the Alien Property Custodian.

Senator CURTIS. What do you do then with the decision of the Supreme Court in the Chemical Foundation case that the Government had the right to confiscate the property?

Mr. BONYNGE. Oh, it has the right to confiscate the property, but under this treaty they apply it in the way provided for by the treaty. There is no question but they have the right to take it if they want to.

The CHAIRMAN. Well, then, I do not see any other way of the Government proceeding with the \$60,000,000, unless the 2½ per cent provided for under the Dawes plan would pay the balance of the debts that may be due the nationals after the distribution of the alien property, and then the balance of it to go to the Government.

Mr. BONYNGE. The 2½ per cent would go to the Government then.

Senator JONES of New Mexico. I was just coming to that. You say for the payment of this \$60,000,000. I use that term in order to specifically designate the claim to which I refer.

Mr. BONYNGE. Yes. It is not quite that amount.

Senator JONES of New Mexico. Well, that is all right. If there is any property of the German Government, we can take it, you say, for the payment of this \$60,000,000?

Mr. BONYNGE. You could if you desire to; yes.

Senator JONES of New Mexico. Yes. Now then, could we pay that out of this 2½ per cent which we are getting under the Dawes agreement?

The CHAIRMAN. Pay it how, Senator?

Mr. BONYNGE. I do not quite understand.

Senator JONES of New Mexico. I mean, could we collect that money which would come under the 2½ per cent of the Paris agreement and apply it to this \$60,000,000 claim?

Mr. BONYNGE. Under that plan for distribution of that 2½ per cent the provision is that that 2½ per cent is to be used for the payment of the awards made by the Mixed Claims Commission.

Senator JONES of New Mexico. And that includes the \$60,000,000?

Mr. BONYNGE. That includes the claim of the United States; yes.

Senator JONES of New Mexico. So as to this \$60,000,000 claim the only method of collecting that is any German property which we may have, and the proceeds of that 2½ per cent?

Mr. BONYNGE. I think only the 2½ per cent as it stands now.

Senator JONES of New Mexico. Why do you exclude German property now? I am speaking of property of the German Government.

Mr. BONYNGE. Oh, you might apply that. Yes; if you desire to you might take that property in payment of the claims of the Government as reparations.

Senator JONES of New Mexico. And the proceeds of the 2½ per cent arrangement?

Mr. BONYNGE. Yes.

Senator JONES of New Mexico. Those are the only sources then from which we may expect any payment upon this \$60,000,000 claim, are they?

Mr. BONYNGE. As far as I am familiar with; yes.

The CHAIRMAN. Mr. Bonyng, are you not mistaken in relation to the 2½ per cent that any part of that could go to the reparations that the Government of the United States could claim—132 billion marks were allowed?

Mr. BONYNGE. Yes.

The CHAIRMAN. And that is divided between the other countries. We are not involved in that. We can not take any of that money.

Mr. BONYNGE. No; that is true.

The CHAIRMAN. Well, I understood you to say that you could.

Mr. BONYNGE. Well, that 2 1/4 per cent of the amount paid under the Dawes plan was to apply on the awards made by the Mixed Claims Commission.

The CHAIRMAN. Well, the only thing that we can take is whatever balance there may be here after paying our nationals with the property that we have.

Mr. BONYNGE. Yes.

The CHAIRMAN. That is all. We have no other claims, Senator, unless there is some national—

Senator JONES of New Mexico. Well, I do not believe the chairman of the committee understands the statement made awhile ago by Mr. Bonyngue. If I understood him, this property which is in the hands of the Alien Property Custodian can only be applied to the payment of American nationals, excluding the \$60,000,000 claim of Government, and if there is any surplus it would have to be turned over to the Reparation Commission.

Mr. BONYNGE. It might be under the provisions of the Versailles treaty.

The CHAIRMAN. No; but it does not have to, Senator.

Mr. BONYNGE. No.

The CHAIRMAN. Whatever balance there is goes to the Government of the United States, and that is all the money that we will get.

Senator JONES of New Mexico. That is just what I was trying to get out of Mr. Bonyngue. And I should like to know whether my understanding is correct, or the understanding of the chairman of the committee.

Mr. BONYNGE. Well, under article 243 of the treaty it says:

The following shall be reckoned as credits to Germany in respect of her reparation obligations:

(a) Any final balance in favor of Germany under Section V of Part III and Sections III and IV of Part X.

The CHAIRMAN. Yes.

Mr. BONYNGE. Now under Sections III and IV of Part X those are the debts and the damages arising from the application of exceptional war measures. If there is any balance after the payment of those it may be applied upon the reparations.

The CHAIRMAN. That is exactly what I say.

Senator JONES of New Mexico. And you mean by that the claim of the United States of \$60,000,000?

Mr. BONYNGE. Yes. A reparation claim; yes.

The CHAIRMAN. Yes.

Mr. BONYNGE. That is the same statement which I made before.

Senator JONES of New Mexico. That is just what I intended to clear up.

Mr. BONYNGE. That is what I intended to say.

Senator JONES of New Mexico. I did not understand you before.

The CHAIRMAN. Well, I think that Mr. Bonyngue made the statement just as you presented it to him.

Senator JONES of New Mexico. I am sure that he did.

The CHAIRMAN. But I did not understand it so, and therefore I asked him the question that I did.

Senator JONES of New Mexico. And I was basing my supposition on the remarks of Mr. Bonynge.

The CHAIRMAN. Yes.

Senator JONES of New Mexico. Now, then, let us see if we understand it. This property which we have is first to be applied to the claims of American nationals?

Mr. BONYNGE. May be.

Senator JONES of New Mexico. May be?

Mr. BONYNGE. Yes. Arising under the economic clauses. To American nationals arising under the economic clauses.

Senator JONES of New Mexico. Well, those are the only clauses, are they not, which are dealt with by the Mixed Claims Commission?

Mr. BONYNGE. Oh, no; oh, no. The Mixed Claims Commission also deals with the reparation claims of American nationals.

Senator JONES of New Mexico. Well, what do you include within that term, speaking now with particular reference to the claims which have been filed before the Mixed Claims Commission?

Mr. BONYNGE. I mean any of the claims that arise under any one of the subdivisions 1 to 10, set forth in Annex I following article 244 of the treaty.

Senator JONES of New Mexico. Well, state the nature of such claims.

Mr. BONYNGE. Damages to property resulting from hostilities and operations of war. Destruction of ships. The reparation claims are those mentioned; specifically:

Damage to injured persons and to surviving dependents by personal injury or to death of civilians caused by acts of war.

For instance, the persons who lost their lives on the *Lusitania* and other ships.

Damage caused by Germany or her allies to civilian victims of acts of cruelty, violence, or maltreatment.

Damage caused by Germany or her allies in their own territory or in occupied or invaded territory to civilian victims of all acts injurious to health or capacity to work, or to honor, as well as to the surviving dependents of such victims.

Damage caused by any kind of maltreatment of prisoners of war.

Senator JONES of New Mexico. I think you have read enough.

Mr. BONYNGE. But the principal one I have not read. Leaving out the others:

Damage in respect of all property wherever situated belonging to any of the allied or associated States or their nationals, with the exception of naval and military works or materials, which has been carried off, seized, injured, or destroyed by the acts of Germany or her allies on land, on sea, or from the air, or damage directly in consequence of hostilities or of any operations of war.

Senator JONES of New Mexico. Does that include the State, the Government of the United States?

Mr. BONYNGE (reading):

Damage in the form of levies, fines, and other similar exactions imposed by Germany or her allies upon the civilian population.

The CHAIRMAN. Yes.

Senator JONES of New Mexico. Now, let me see if I get the proposition now. This property in the hands of the Alien Property Custodian is first liable, or may be made liable for the claims of American nationals under the economic clauses of the treaty?

Mr. BONYNGE. Yes; exactly.

Senator JONES of New Mexico. Second, it may be applied to the payment of reparation claims of American nationals and the Government of the United States?

Mr. BONYNGE. It may, according to the provisions of the Versailles treaty, be put into the reparation fund and given as a credit to Germany upon the reparation payments due by Germany.

Senator JONES of New Mexico. Well, then, how do you expect the damages that its people suffered by reason of the sinking of the *Lusitania* to be paid? Do you mean to say that they are not payable out of this fund?

Mr. BONYNGE. This fund is not subject to the payment of claims except those arising under the economic clauses.

The CHAIRMAN. The whole difficulty and misunderstanding arises, as I understand it, right here, that we have nothing whatever to do with the reparation fund.

Mr. BONYNGE. Oh, yes; the *Lusitania* would be, for this reason. Under that paragraph 4 that I have just read we have an additional right for all claims that arose by acts of Germany prior to the time we entered the war, and that property is made subject to a lien for all of those claims. The only countries that would have such claims would have been the United States and possibly Italy for damages done by an act of Germany to an American or Italian national prior to the time the said countries entered the war, and regardless of whether it was a reparation claim, if it arose during our neutrality period this property in the possession of the Alien Property Custodian would be subject to a lien for the payment of such claims.

Senator JONES of New Mexico. When did that arise? By virtue of what measure or treaty?

Mr. BONYNGE. By virtue of section 4, following article 298, and by virtue of the Knox-Porter resolution. And then by section 4, which I just read to you, this property shall be charged in the first place—

with payment of amounts due in respect of claims by the nationals of that allied or associated power with regard to their property, rights, and interests, including companies and associations in which they are interested, in German territory, or debts owing to them by German nationals, and with payment of claims growing out of acts committed by the German Government or by any German authorities since July 31, 1914, and before that allied or associated power entered into the war.

Now, that covers all of our neutrality claims. So that all of our neutrality claims are made a charge upon the property of the German nationals in the possession of the Alien Property Custodian.

Senator JONES of New Mexico. All right. Now we will take another start.

Mr. BONYNGE. I think that clears that.

Senator JONES of New Mexico. I think all this has tended more to confusion than anything else. I wanted to get back to my original thought of how this matter should be worked out to give us an

understanding of where we are at. This property in the hands of the Alien Property Custodian is liable for the claims of American nationals under the economic clauses and under the provisions of the Versailles treaty providing for damages before we entered the war.

Mr. BONYNGE. Yes, sir.

Senator JONES of New Mexico. Now, then, where does the claim of the United States come in, the \$60,000,000?

Mr. BONYNGE. Let me see—"and with payment of claims growing out of acts committed by the German Government * * *"—yes; I think that they would be liable for the Government claim that arose by an act of the German Government since July 31, 1914, and before we entered the war.

Senator JONES of New Mexico. Well, did we have any such claim?

Mr. BONYNGE. I do not know. I do not think we did.

The CHAIRMAN. Senator, I call Mr. Bonynge's attention to article 243, to remind him of that, because it is right in connection with this, Senator, and I think we want to get at the facts.

Senator JONES of New Mexico. Absolutely. That is all I am after.

The CHAIRMAN. Article 243 provides:

The following shall be reckoned as credits to Germany in respect of her reparation obligations:

(a) Any final balance in favor of Germany under * * * Sections III and IV of Part X of the present treaty.

That is the economic clause.

Mr. BONYNGE. Yes.

The CHAIRMAN. That is what article 243 provides.

Mr. BONYNGE. Yes.

The CHAIRMAN. Under that article it seems to me that it would be impossible to have anything whatever to do with the reparations affecting the economic clauses here other than the property that is held by the Alien Property Custodian.

Mr. BONYNGE. Well, that is to say, if there was a surplus.

The CHAIRMAN. Well, then, that surplus can come to the Government, and that is all.

Mr. BONYNGE. Can come to the Government?

The CHAIRMAN. Yes.

Mr. BONYNGE. To be a credit to Germany. But reparations were distributed under the treaty through the Reparation Commission.

Mr. PHENIX. Can I state what my understanding is?

The CHAIRMAN. Yes.

Mr. PHENIX. The United States did not participate in the Reparation Commission.

The CHAIRMAN. That is so.

Mr. PHENIX. The sum total of 132,000,000,000 gold marks, which was fixed as Germany's reparation obligations did not include any allowance for the reparation claims for the United States. The only way that any balance remaining of the alien property could be applied as a credit on the United States reparation claims would be to satisfy those claims here.

The CHAIRMAN. That is as I understand it.

Mr. PHENIX. If you turn the money over to the Reparation Commission, it would be applied against the reparation claims of the allied governments, and there would be absolutely no participation.

Mr. BONYNGE. Yes. I stated that.

Senator JONES of New Mexico. You are now getting at the point which I had in mind.

The CHAIRMAN. I did not understand you to.

Senator JONES of New Mexico. No; I understand the witness to say—

Mr. BONYNGE. I said it would go 52 per cent to France if we turned it over to the Reparation Commission, under the provisions of the Versailles treaty.

Mr. PHENIX. If we did, yes.

Mr. BONYNGE. If we did, yes.

Mr. PHENIX. But we do not have to.

Senator JONES of New Mexico. But what I am talking about is, what right have we got to apply it to our claim without turning it over to the Reparation Commission?

The CHAIRMAN. Under article 243.

Mr. BONYNGE. Under article 243, I should imagine. If we have the right at all it would be under article 243.

The CHAIRMAN. Article 243 says, Senator, and this is the only authority that we have got—

Mr. BONYNGE (interposing). That it shall be a credit.

The CHAIRMAN (reading) :

The following shall be reckoned as credits to Germany in respect of her reparation obligations:

(a) Any final balance in favor of Germany under * * * Sections III and IV of Part X—that is the economic clauses—of the present treaty.

Now that is the only authority that we have to take, even if there should be a balance, and apply it.

Senator JONES of New Mexico. Well, now, I am willing to state that I had the same view of this as the chairman now announces, but the witness' statements it seemed to me were not in that direction. They did not confirm that construction of it.

Mr. BONYNGE. I spoke of what would occur under the Versailles treaty.

Senator JONES of New Mexico. Well, I do not care whether it is the Versailles treaty or the Berlin treaty or the Paris agreement or the creation of the Mixed Claims Commission, or what not. What I am getting at is: Where can the Government of the United States collect this \$60,000,000?

The CHAIRMAN. That is it.

Senator JONES of New Mexico. That is what I am trying to get at.

Senator SHORTRIDGE. Do you mean under the treaty, Senator, may I ask you?

Senator JONES of New Mexico. I mean under anything.

Senator SHORTRIDGE. Or under our inherent power?

Senator JONES of New Mexico. Under anything. I want to know where we can collect this \$60,000,000.

Mr. BONYNGE. I was undertaking to explain the methods provided for by the Versailles treaty, and that under the Versailles treaty all reparation payments went to the Reparation Commission

and were distributed by the Reparation Commission, but we were not parties to the Reparation Commission, and then if there is any surplus—

Senator JONES of New Mexico. Well, now, that is a whole lot of circumlocution, Mr. Bonynge. If you were employed by the United States to collect this \$60,000,000, where could you put your finger on something to get the pay?

Mr. BONYNGE. Out of any surplus that was left.

Senator JONES of New Mexico. Surplus of what?

Mr. BONYNGE. Of this property after the payment of the economic claims.

Senator JONES of New Mexico. That is just what I was trying to get at exactly.

Mr. BONYNGE. The first lien on the property in the possession of the Alien Property Custodian is for the payment of the economic claims of our nationals.

Senator JONES of New Mexico. So then after the payment of the American nationals out of this property, why we can apply any surplus which there may be to the payment of this claim of the United States, is that right?

Mr. BONYNGE. I beg your pardon, I missed that.

Senator JONES of New Mexico. So then after applying the property in the hands of the Alien Property Custodian to the payment of American nationals' claims, if there is any surplus we have a right under these agreements which we have had to apply the surplus to the payment of this claim of the United States Government?

Mr. BONYNGE. Yes, sir, I think that is true.

Senator JONES of New Mexico. Well, that is just exactly what I was trying to get at.

The CHAIRMAN. Now you may proceed, Mr. Bonynge.

Senator HARRISON. Mr. Chairman, Mr. Green wanted to ask a question.

The CHAIRMAN. Yes, Congressman Green, you wanted to make a statement.

Representative GREEN. Well, it has got so far past the point that you were discussing at that time. I merely wanted to make a little statement of fact with reference to the property of the German Government. It is believed that there is about \$5,000,000 of property in the hands of the Alien Property Custodian which either belongs to the German Government or to the former reigning family of Germany. And that amount is not to be turned over under the provisions of the bill, but is to be withheld and applied towards the claims of the mixed commission.

The CHAIRMAN. Well, do I understand then that the estimates given in your report as to the amount of alien property on hand does not include that \$5,000,000?

Representative GREEN. Well, I can not say just how that is worded. Probably Mr. Alvord can answer that more accurately than I could.

Mr. ALVORD. The situation of the \$5,000,000 is this. If it is actually determined to be German property—and that determination has not yet been made—if it is actually determined to be German property there is an attachment against it under a decision of the Su-

preme Court which will undoubtedly cover all of the \$5,000,000. If there is anything left the bill then provides that it will be liquidated and paid into the special deposit account for distribution as the bill provides. And the amount will be credited against Germany.

The CHAIRMAN. That does not answer my question. The statement submitted to the House from the Alien Property Custodian is that there are so many millions of dollars of property on hand. Now does that include this \$5,000,000?

Mr. ALVORD. Yes, sir.

The CHAIRMAN. Well, then, if the Supreme Court decision says that that property belongs to Germany, and we take the \$5,000,000 and pay it upon our \$60,000,000, then there will be \$5,000,000 less to pay here, or to be made up in some other way, of the property that is held for our nationals.

Mr. ALVORD. In the report of the total aggregate property it includes the German property, but allowance would be made of the German property in the allowance that would be taken under the bill.

Mr. SUTHERLAND. Mr. Chairman, my impression is that Mr. Alvord is just a little mistaken. The judgments that were obtained have been satisfied. I know of no judgments that are unsatisfied and outstanding. There was transferred by agreement about \$2,715,500 out of an unidentified account and placed to the credit of the German Government. And that sum just happened exactly to meet these judgments, seventeen in all, twelve of them obtained here in the District of Columbia, and five in the Federal courts of Missouri. So that that sum being transferred as an unidentified German Government account was wiped out entirely by these judgments.

The CHAIRMAN. Well, were those judgments in favor of the Government or individuals?

Mr. SUTHERLAND. Those were on account of these dollar bonds that were sold. Those were claims arising out of the sale to our nationals of these dollar bonds. Now then we still have in seven different trusts four million nine hundred and some odd thousand dollars of unidentified money which may or may not be subsequently or later identified as being the property of the German Government or of the former reigning family of Germany. We carry those as undisclosed enemy accounts.

The CHAIRMAN. Well, the amount is included in the total that you report as having on hand.

Mr. SUTHERLAND. Yes; that is all included as part of our fund on hand. It is not separated in any way.

The CHAIRMAN. Now, Mr. Bonynge.

Mr. BONYNGE. Some questions were asked about the Government not pressing claims under subdivisions 5, 6, and 7 of the reparation clause. Last evening I happened to notice a note made by Judge Parker in one of his decisions referring to a debate that occurred in the Senate when the Berlin treaty was before the Senate, that I thought might be of interest to the members of the committee. This is found on page 320 of the Consolidated Edition of Decisions and Opinions of the Mixed Claims Commission, United States and Germany:

When the treaty of Berlin was before the Senate of the United States, Senator Walsh of Montana moved to strike from it the provisions obligating

Germany to reimburse the United States for pensions and separation allowances paid by the latter. He said, *inter alia* (p. 6367, vol. 61, Congressional Record), "at the conference of Versailles an insistent demand was made by certain of the Allies to exact compensation of Germany for all damages occasioned by the war; and * * * after the debate progressed before the Versailles conference, the contention was finally abandoned by every one of them, and it was agreed that the compensation to be exacted of Germany should be limited to the damage which was done to the civilian population * * *. I challenged anyone to attempt to defend pensions and separation allowances as damages done to the civilian population, and no one has attempted so to defend them."

At this point Senator Shortridge, of California, asked Senator Walsh in substance if he feared or thought that the United States, "by whomsoever guided or directed, will ever make" a demand on Germany for the payment of pensions and separation allowances, in effect expressing the opinion that such a contingency was so remote as to make of no consequence the objection of Senator Walsh to the treaty as it stood. This opinion expressed by Senator Shortridge, which was not challenged and which, as appears from the debates, expressed the view held by the Senate, was fully justified when the President of the United States authorized the statement that he had no intention of pressing against Germany or presenting to this commission any claims falling within paragraphs 5, 6, and 7 of Annex I to Section I of Part VIII of the treaty of Versailles. (See exchange of notes between Chancellor Wirth and Ambassador Houghton on August 10, 1922, printed in connection with the agreement between the United States and Germany providing for the creation of this commission, American Treaty Series, No. 665.)

Now, I have not examined the Congressional Record, but there may be something in the Congressional Record during that debate that might be of interest to the members of the committee in reference to the position taken by the Government that they would not press those particular claims.

Senator SHORTRIDGE. Senator Jones, that recalls to my mind the discussion in the Senate when the treaty was under consideration. And if I caught what you read, the point was whether our Government would make demand upon Germany on account of any pensions that we had paid or might through legislation agree to pay and pay hereafter.

Mr. BONYGNE. Yes.

Senator SHORTRIDGE. That was the point, was it not, that was up?

Mr. BONYGNE. Yes, that was the point. Senator Walsh had offered an amendment striking out that provision of the Berlin treaty.

Senator SHORTRIDGE. Yes. My recollection is we agreed as to that proposition, Senator Walsh and I.

Mr. BONYGNE. Yes. Your statement was that the Government never would undertake to make claim for those payments, and that therefore it was unnecessary to strike it out from the treaty because they never would be pressed anyway.

Senator SHORTRIDGE. And in any demands which our Government has made thus far no claim for pensions has been included?

Mr. BONYGNE. No.

Senator JONES of New Mexico. I have made reference to those provisions of the Versailles treaty, not for the purpose of expressing any opinion one way or the other as to whether such claims should be waived or not. I merely intended to call attention to the fact that such claims are within the provisions of the Versailles treaty and that the State Department had assumed to ignore those provisions on its own responsibility and without any expression from the Congress. And the question was in my mind, and which I wish to get

into the record, as to whether or not the State Department went beyond its jurisdiction when it undertook to waive those claims; such claims having been provided for in the Berlin treaty, whether the State Department was justified in assuming any such responsibility. And as I take it the remarks of the distinguished Senator from California and the Senator from Montana on the floor of the Senate could have amounted to nothing more than an expression of individual opinion, and could not and did not bind the Government of the United States. And if you will allow a parenthesis here, I think I agree with the remarks made by the Senator from California and the Senator from Montana, but that does not touch the question as to the right of the State Department to waive any of such claims.

The CHAIRMAN. Well, Senator, the State Department did not waive any right. The State Department went just this far, that they expressed themselves that they thought that the President had no intention whatever of forcing those claims.

Mr. BONYNGE. Pressing them.

The CHAIRMAN. That is as far as the State Department went. It did not waive the claims at all.

Senator JONES of New Mexico. I understand that. But if you take the notes, which are in this record, exchanged between the State Department and the representatives of the German Government in the creation of the Mixed Claims Commission, I think you will find it perfectly clear that the exchange of notes really constitutes a moral agreement between the parties not to present any such claims.

The CHAIRMAN. And I think that is the sentiment of the people throughout the country.

Senator JONES of New Mexico. Well, that may be, but it does not touch the point which I was trying to make.

The CHAIRMAN. Well, but that is not a waiver.

Senator JONES of New Mexico. Well, if it is not a waiver to say that you are not going to present a claim I would like to know what you call it.

The CHAIRMAN. Well, it did not go that far.

Senator SHORTRIDGE. Well, of course, that proceeds upon the assumption that we did have a legitimate claim under the Treaty of Versailles.

Senator JONES of New Mexico. Well, I think it is admitted that there is no question but that the Treaty of Versailles did include such claims.

Senator SHORTRIDGE. That character of claims?

Senator JONES of New Mexico.. Yes.

Senator HARRISON. And other countries collected such claims.

Mr. BONYNGE. I do not know whether they did.

The CHAIRMAN. No; I do not know of one.

Senator McLEAN. I do not think so.

Senator JONES of New Mexico. Yes; but any of the claims that they did think they had any chance to collect.

Senator McLEAN. Well, they had other claims that would amount to more than they could get. And of course that is the case with us. We could not collect any such claim even if we presented it.

Mr. BONYNGE. I understand that about one-third of the claims of the other governments are for pensions. And they come under those three clauses.

The CHAIRMAN. We have a complete table of what they consisted of.

Senator JONES of New Mexico. Well, I would like to have that made clear here.

Senator McLEAN. I would, too.

Senator JONES of New Mexico. As to whether or not our associates in the war did make claim under sections 5, 6, and 7 of article 297 of the Versailles treaty.

Mr. BONYNGE. There is no doubt they made the claim. You asked me first whether they collected. I do not know whether they collected, but they made the claim.

The CHAIRMAN. In the original claim, before reducing the amount to 132 billion gold marks, there were pensions mentioned in the original claims of France, England, Belgium, Italy, Japan, Rumania, Portugal, Greece, Brazil, Siam, Bolivia, Peru, Haiti, Cuba, etc.

Senator JONES of New Mexico. How much were the claims valued at or made for when originally presented?

The CHAIRMAN. Well, for instance, the British Empire made a claim for military pensions and compensation of the same nature of 1,706,800,000 pounds sterling. That was on the original estimate.

Senator JONES of New Mexico. Well, now, I would like to put in the record these other claims.

The CHAIRMAN. Well, I can tell you some of them. The large ones, because the others, outside of the British Empire, France, Belgium, Italy, and Japan, are as follows: France, 60,045,696,000 francs; British Empire, 1,706,800,000 pounds sterling; Italy, 31,041,-000,000 francs; Belgium, 1,637,285,512 French francs; and Japan, 70,294,000 yen.

Those are the principal ones.

Senator JONES of New Mexico. Now what part did they constitute of the original claim of those Governments against Germany?

The CHAIRMAN. Well, for instance, with France—

Senator JONES of New Mexico. Why not let us put that list into the record here.

The CHAIRMAN. Well, I can tell you the percentage in just a minute. Approximately 30 per cent with France. With Britain approximately 50 per cent. Italy is about 50 per cent. Belgium approximately 5 per cent. And Japan nearly all of it.

Senator McLEAN. That was in the original claim?

The CHAIRMAN. Yes, that was in the original claim.

Senator McLEAN. Now what did they finally come to?

The CHAIRMAN. That of course I have not the list of.

Senator McLEAN. Well, were they still included in the final agreement?

Mr. PHENIX. May I explain?

Senator McLEAN. Yes.

Mr. PHENIX. The gross estimates of the Allied Governments were arbitrarily reduced to the lump sum figure of 132 billion gold marks. There is no distribution as between categories of claims, so it is impossible to trace a particular claim to a particular allowance by the Reparation Commission.

Senator McLEAN. Well, it was reduced to 132 billion gold marks?

Mr. PHENIX. It was reduced to 132 billion gold marks, yes.

Senator McLEAN. I thought we were discussing that. I thought this chart had that.

The CHAIRMAN. No, this is the original.

Senator McLEAN. Those are the estimates submitted by each country.

The CHAIRMAN. Yes, the estimates submitted by each country.

Senator McLEAN. What does that total?

Mr. PHENIX. There is no total. It involves a dozen different currencies and a dozen different exchange rates. It has been variously computed, but it aggregated something over two hundred billion.

The CHAIRMAN. Oh, yes, more than that. Two hundred and sixty billion anyhow.

Senator McLEAN. Yes. So that as finally agreed to the total claim would amount to a sum which would exclude any claim for pensions?

Mr. PHENIX. No, there was no exclusion of the particular items.

Senator JONES of New Mexico. No, it would not do that, Senator. England's claim, for instance, was over 50 per cent for that reason.

Senator McLEAN. Well, she did not get more than 50 per cent of the original.

Senator JONES of New Mexico. Oh, yes, they were reduced to 132,000,000,000 gold marks.

Senator McLEAN. Well, what was the total? Something over 200,000,000,000?

The CHAIRMAN. Two hundred and sixty billion.

Senator JONES of New Mexico. Well, I think the statement 260,000,000,000 is probably not accurate.

Senator McLEAN. I would like to know whether this final settlement still rested in these claims an expectation of getting certain sums for their pension accounts, or whether when they came to a final settlement it was based upon an exclusion of those pension claims?

Senator JONES of New Mexico. Well, I think the statement has been correctly made that there was never any designation of claims which were excluded. That they simply reduced the amount within what they supposed to be the ability of Germany to pay.

Senator McLEAN. I know.

Senator SHORTRIDGE. Mr. Chairman, may I ask you a question? Am I right in thinking that under the Dawes Plan the total amount of reparations to be paid by Germany has never been fixed.

The CHAIRMAN. Well, no, not definitely fixed. That is true. Because they do not know how long they will have to pay, or what the interest may be.

Senator McLEAN. The witness was going to enlighten the committee as to the fate of our nationals who held securities in Germany and whose claims were not presented to the Mixed Claims Commission within the six months' limitation.

Mr. BONYNGE. Yes. Perhaps it would first be in order to explain the liability of Germany for securities that were in Germany, and the rules of the commission governing such liability. The bonds that matured or coupons that matured during the war were debts which were to come under the rules for valorization at 16 cents to the mark regardless of whether they were in Germany or here. They were debts. Now, those that did not mature by their terms, and most of the German bonds did not mature because they have

a system of issuing bonds with no definite period of maturity, but subject to call by the government, drawing by lot, etc., and they did not draw by lot during the war, so that practically none of their bonds matured during the war.

Those that were not debts, if the bonds were in Germany during the time that the exceptional war measures in Germany were in effect, that was from November 10, 1917, to January 10, I think it was 1920, were then held to be subjected to Germany's exceptional war measures. We established that the exceptional war measures applied to those bonds by proving that they were in Germany during that time. This fact alone did not entitle a claimant to an award for damages as the result of the exceptional war measure. The American national had to establish in addition to that fact that damages resulted to him by reason of the application of the exceptional war measures to his securities. The exceptional war measure that affected the bonds was the provision of the German decree which prohibited the exportation of the bond from Germany or securities or money from Germany.

Senator McLEAN. They were substantially sequestered. They could not be realized upon.

Mr. BONYNGE. They were prohibited from taking them out of Germany.

Senator McLEAN. Yes.

Mr. BONYNGE. And that was the exceptional war measure. Now if an American national had had his bonds in Germany for a long time before we entered the war there would not have been any presumption that he would have taken them out even though the exceptional war measure had not been applied to them. The Anglo-German Mixed Arbitral Tribunal has held that in cases of this kind it was necessary to establish some overt act on the part of the English national to take his bonds out of Germany for the purpose of sale or exchange in order to establish that the exceptional war measure had caused the damage.

The rules established by our commission were a little more liberal in that respect. Our rules provided that if the bonds were in Germany that was enough to prove that they were subjected to the exceptional war measure, and then if the claimant was able to establish by evidence such facts as would warrant the commission in drawing the reasonable conclusion from the evidence that he would have withdrawn his bonds from Germany for sale or exchange save for the exceptional war measure, then he would be entitled to recover the damages that resulted to him by reason of the application of the exceptional war measure. Those damages would be the difference between the value of the securities at the time the exceptional war measure applied to the bonds and the value at the time the exceptional war measure ceased to be applicable to the securities. The difference between those two values would be the amount of his damage.

Senator McLEAN. Well that rule applies to the claimants who filed their claims within the six months with the commission?

Mr. BONYNGE. Yes.

Senator McLEAN. Now I want to get at the claimant who filed his claim, we will say, with the Alien Property Custodian but did not file his claim with the commission.

Mr. BONYNGE. That filed the claim with the Alien Property Custodian? In most of the cases where the claim was filed with the Alien Property Custodian but had not been filed with the commission before April 9, 1923, were before the commission.

Senator McLEAN. Well, perhaps I had better read this resolution that was introduced by Senator Copeland. I promised to bring it to the attention of the committee, and it is possible that if I read it you may understand better than I have suggested the question. This is the amendment:

(u) It shall be the duty of the arbiter to hear, determine, and adjudicate certain claims, described in this subdivision (u), of American citizens, filed prior to the passage of this act before the Secretary of State or the Alien Property Custodian of the United States, against the Government of Germany, or its nationals. The Secretary of State and the Alien Property Custodian shall refer to the arbiter all such claims filed before them by American citizens against Germany or its nationals.

(1) Where the arbiter finds that such claims of American citizens against the German Government, or its nationals, so filed with him, were based upon debts of the German Government, or its nationals, payable in mark currency, owing but not due, or due and not paid, and owned by American citizens prior to October 6, 1917, and that the evidences of such indebtedness were subjected to the German Government's war orders of "Measures of economic retaliation against the United States," he shall render decisions in favor of such citizens upon the basis of 1 mark equals 16 cents in United States currency, and his findings shall bear interest at the rate of 5 per centum per annum, from the date upon which Germany's "Measures of economic retaliation against the United States," were revoked, namely, January 10, 1920. Such decisions of the arbiter in favor of American citizens shall be against the Government of Germany, and shall have the same force and effect as awards made by the Mixed Claims Commission, and shall be treated and paid in like manner as is provided for awards by such commission in this act, and paid out of the funds provided for in section 5 thereof: *Provided*. That the recovery of any debt under this section shall be barred if the claimant has signed a waiver thereof before the Mixed Claims Commission.

Mr. BONYNGE. I think, Senator, you will readily see that the purpose of that amendment is in effect to change the treaty. Germany under the treaty was liable for the debts that matured during the war, not for the debts that were owing during the war and did not mature.

The CHAIRMAN. Or created during the war.

Mr. BONYNGE. Yes, or according to the proposed amendment created during the war. This amendment is to provide for these war bonds that were issued by Germany and that did not mature during the period of belligerency and are still owing. It proposes that they shall be valorized at the rate of 16 cents, which is an additional provision to what the treaty provides. It is attempting to hold the property for something that the treaty does not authorize the property to be held.

Senator McLEAN. Well, what do you say as to the justice of such claims?

Mr. BONYNGE. I have no sympathy at all with claims of that character. People who speculated in German bonds, and especially the war bonds, knew that they were taking the risk.

The CHAIRMAN. Does not that amendment go farther than the bonds? I think it takes in indebtedness with German marks.

Mr. BONYNGE. Yes, think it does.

Senator HARRISON. What he is trying to get at is bonds.

Mr. BONYNGE. Yes.

The CHAIRMAN. One of my dear friends speculated in German marks, bought millions and millions.

Mr. BONYNGE. Yes; and they want them all valorized at 16 cents.

The CHAIRMAN. They want them valorized at 16 cents, and they bought some of them for about 3 or 4 cents.

Mr. BONYNGE. Less than that.

Senator MCLEAN. I have had so many communications from my constituents, insisting that these claims are just and should be recognized, that I would like your view, and I promised Senator Copeland that I would bring his resolution to the attention of the committee.

Senator JONES of New Mexico. I think it is quite right that the committee should consider it.

Senator MCLEAN. Yes.

Senator JONES of New Mexico. Now, what I would like to ask in that same connection is whether or not there are any claims barred by the six months limitation which would come within the jurisdiction of the Mixed Claims Commission?

Senator MCLEAN. Yes; that is the next question.

The CHAIRMAN. Yes.

Mr. BONYNGE. Yes; there are some.

Senator SHORTRIDGE. What was the date of the expiration of the six months period?

Mr. BONYNGE. April 9, 1923.

Senator GERRY. I would like to ask the witness a question there, too. What was the notice given? How was notice given as to the termination of the six months period?

Mr. BONYNGE. Through the press.

Senator GERRY. Was there any publication in the press?

Mr. BONYNGE. Yes; several publications by the State Department in the press.

Senator GERRY. Well, how was it published? Was it advertisements?

Mr. BONYNGE. No; not by advertisements. Just press notices.

Senator GERRY. Just in news items?

Mr. BONYNGE. Press notices.

Senator GERRY. Well, then, it would be very easy for claimants not to know it.

Mr. BONYNGE. Well, in addition to that, long before the commission was appointed many thousands of claims had been filed with the State Department. People generally understand that if they have a claim against a foreign government the State Department is the department that looks after such claims, and they filed those claims with the State Department. In addition to that the State Department had endeavored to ascertain long before the commission was appointed any American nationals who had property in any of the foreign countries during the war, and they had a long list of such people. All of those people were advised to file their claims by personal letters from the agency. Any communication that the State Department had from any national in reference to a possible claim against Germany was turned over by the State Department to the American Agency upon the organization of the commission. And every one of those people were communicated

with and advised to file their claims. And that the notice was quite effective, that they generally understood that the claims had to be filed within that time I think is perhaps demonstrated by the fact that 12,416 claims were actually filed before April 9, 1923.

Senator GERRY. Well, of course, all the big claims and all the claims of large, active business interests would naturally be filed because those claims would be carefully watched by competent attorneys, and they would know what was going on in the State Department. But I can well see how a perfectly just claim can have been held out by ignorance on the part of the holder of the claim. And the State Department did not, as far as I know, publish any advertisement. I did not see any.

Mr. BONYNGE. Oh, they did not publish any advertisement. They published press notices.

Senator GERRY. And I am questioning whether they were sufficiently diligent in the notice they gave within the six months' period.

Senator McLEAN. I suppose there were people who did not file their claims and yet whose claims matured during the war. There would be a case where you would think that some provision should be made.

Mr. BONYNGE. Well, I do not know as I would think that some provision should be made. The question would be whether the claim was barred by reason of that limitation. I made an examination of the claims last April, I think it was, that were filed with the State Department since April 9, 1923. At that time there was some discussion as to whether it would be advisable to ask Germany to modify that agreement and extend the time for filing claims; and, as the German Government would have to consent to it, I asked the German agent to go with me to the State Department, and go over the claims that were there that had been filed; and, as the result of that, I wrote a letter to the State Department; and I think by reading that letter, which is not very long, I can state more clearly and concisely what I found to be the situation. This letter was dated March 4, 1926. [Reading:]

The SECRETARY OF STATE.

SIR: I have the honor to report that the agency is daily in receipt of application to file claims against the Government of Germany. My attention has been called to the fact that since April 9, 1923, about 2,000 claims have been filed with the Department of State.

This was on March 4, 1926. There have been quite a number filed since that time.

The question naturally arises as to what, if any, disposition should be made of these late claims. In order to be in a position to make a recommendation in connection therewith, I have personally, with the assistance of the German agent, examined all the papers filed in support of these claims, and have made an estimate of the maximum amount that would be allowable on such claims under the decisions of the Mixed Claims Commission, United States and Germany. In making this estimate no consideration has been given to possible defenses that Germany might interpose to many of the claims, nor to the probable inability of many of the claimants to furnish evidence either of their American nationality or of fact sufficient to warrant the entry of an award. The estimate as to the amount involved is taken on the statements of the claimants and a consideration of the rules and decisions applicable to such claims.

I am inclosing a copy of the estimate thus made, showing the maximum amount allowable on claims now on file to be the sum of approximately

\$3,770,000. This is, in my opinion, an extremely liberal estimate. In all probability the total amount that would be finally allowed after thorough examination of the claims would not much, if any, exceed 50 per cent of the estimate thus made.

It will be noticed that the claims have been divided into different categories. An examination of these claims discloses that over 90 per cent of them are not claims for strictly war damages due to hostilities or operations of war, but are for depreciation in value of securities, bank deposits, private debts, the interests of American citizens in German estates, or are based on German war bonds, and many of which are entirely of a speculative nature.

As you are aware, the time for filing claims and giving notice to the Mixed Claims Commission, United States and Germany, and to the German agent, of the claims to be filed and the amount involved was by an exchange of notes between the two Governments prior to the execution of the agreement of August 10, 1922, fixed at six months after the first meeting of the commission, and that time expired on April 9, 1923. The Department of State gave wide publicity to the fact that claims would have to be filed within the time limited or that they could not be considered by the commission. The fact that 12,416 individual claims were filed within said time, involving practically \$1,500,000,000, demonstrates that the publicity was effective.

As I understand, the principal reasons for the comparatively short time allowed for the filing of claims was that four years had already elapsed since the armistice, many claims had been filed or notice thereof given to the Department of State, and undoubtedly both Governments recognized the supreme importance, for economic and political reasons, of having the total amount of Germany's liability for war losses to the United States determined at the earliest practicable date.

The commission and the agencies of both Governments, appreciating these considerations, have been diligently endeavoring to bring their labors to an early conclusion, with the result that, in less than three years from the expiration of the time limited for filing the claims, over 90 per cent of the work has been finished. This result has been accomplished notwithstanding the fact that the American agency has experienced great difficulty in a large number of cases in obtaining within a reasonable time, from the claimants whose claims were notified within the time limited, the necessary evidence in support of their claims to enable the agency to present them to the commission for adjudication.

The German Government entered into the agreement of August 10, 1922, with the understanding that the claims should be filed and notice thereof given to the German agent within the time limited, and the rules of the commission also so provide.

Whatever limit of time may be established for the filing of claims, there always will be some meritorious claims that will not be filed within such limitation. Every limitation of time on account of action or claims works a hardship in some individual cases. After all, the main consideration, it seems to me, in considering the problem now presented is whether the advantages to be gained by extending the time would offset the disadvantages. Unquestionably, there are some meritorious claims, as there always will be, for which compensation can not be awarded. But the holders of such claims may fairly be charged with laches in not presenting their claims in time to avail themselves of the opportunity afforded them by the Government of the United States to have their claims established and adjudicated by the agency maintained for their benefit at Government expense.

If the time limit should now be extended, I am convinced, in view of the large number of claims now being daily filed, that many thousand additional claims, many of them of doubtful validity, would be filed, necessitating an examination of them by the agency and their adjudication by the commission or some other organization to be established for that purpose, all of which would involve a large additional expenditure of money on the part of the United States and might possibly delay the final payment of the claims that were filed within the time limited to the great injury of the claimants who were diligent in the presentation and prosecution of their claims.

In order to obtain the necessary evidence to support many of the claims that have resulted in awards, it was found necessary to have a representative of the American agency in Germany for a considerable period of time. This was particularly true in reference to estate claims in which American citizens claiming interests in German estates had little or no knowledge of the value of the estates, their condition or their interests therein. If the late claims are

now to be considered, it will probably necessitate again sending a representative to Germany to collect the necessary evidence to establish the validity of the claims. It would doubtless take from one year to two years additional time to dispose of the late claims.

And I think that is a short period, because so many more have since been filed.

Moreover, my examination of the claims filed convinces me that the great majority of them have been filed as the result of solicitation on the part of attorneys who have been circularizing possible claimants throughout the United States.

After careful consideration of all these matters, it is my opinion, and I so recommend, that it would be inadvisable for the Government of the United States to undertake to have a modification of the agreement heretofore made with Germany under which an extension of time would be granted for the filing of claims, or to attempt to make any provision for the settlement and adjudication of claims that were not presented within the time limited by the agreement with Germany and the rules of the commission.

I have the honor to be, sir, your obedient servant,

ROBERT W. BONYNGE, Agent.

Now, let me say, gentlemen, that there has been a regular propaganda by several attorneys trying to collect all sorts of war bond claims and claims by people who purchased marks on the street corners of the cities, and have filed those claims with the State Department. In many instances they have collected fees from those people. Those claims could not possibly be allowed, even if the time were to be extended, and the great majority of those claims are of that character. There are a few meritorious claims there, unfortunately.

Senator McLEAN. The Alien Property Custodian is here, and I would like to ask him a question. Do you know whether your office issued any notices or advertised in any way to these claimants? Whether there was any effort made on the part of your office to interview claimants during the four years that elapsed after the war and before this six months limitation was created?

Mr. SUTHERLAND. That was, Mr. Chairman, before my incumbency of the office, and I will make an investigation and advise the committee at the session to-morrow whether there was.

The CHAIRMAN. Was not the State Department the proper department to do it?

Senator GERRY. Well, did the State Department do it? What did it do? I did not see it.

Mr. SUTHERLAND. Our office may have possibly supplemented that. I will find out.

The CHAIRMAN. I will ask Secretary Kellogg to send over what information he has in relation to it.

Senator GERRY. That is it.

Senator JONES of New Mexico. That request has already been made and is in the record here. We have asked the State Department to furnish us with any notices or proclamations which were made regarding it.

The CHAIRMAN. Yes; and that will be sent to the committee.

Senator JONES of New Mexico. Yes, but I would like to ask Senator Sutherland whether or not any claims against Germany have been filed with the Alien Property Custodian?

Mr. SUTHERLAND. We constantly receive letters from claimants similar to those described by Mr. Bonyngé here. Most of them are

from those holding bonds or marks who purchased speculative marks or bonds and now want them made good. And of course we refer them to the State Department or advise them about the impracticability of securing relief in such cases. There are a few of them, however, I will say, who simply by reason of failure to file perfectly legitimate claims before the time limit set are now barred, who failed to make their claims within the six months' period, and yet who otherwise come within the terms of the treaty.

Senator McLEAN. Would be legitimate if they had filed within the limit?

Mr. SUTHERLAND. Would be perfectly legitimate if they had filed within the limit, and who assert that they had no knowledge of the six months' limit.

Senator JONES of New Mexico. Could you approximate the amount of those claims?

Mr. SUTHERLAND. I could not in amount. No doubt a great many of them have since that time been filed with the State Department and are probably included in the figures given by Mr. Bonyngé in their investigation, because they have all been referred to the State Department. So probably he has included most of those claims.

Mr. BONYNGE. I have, yes.

Senator JONES of New Mexico. Then as I understand it so far as we now know those claims may amount to somewhere between three or four millions of dollars?

The CHAIRMAN. The total of them.

Senator JONES of New Mexico. The total of them.

The CHAIRMAN. Yes.

Mr. BONYNGE. But not those that might be allowed.

The CHAIRMAN. Those that might be allowed are a very small percentage of that amount.

Mr. BONYNGE. I think those that might be allowed are a very small percentage of that amount.

Senator JONES of New Mexico. Well, I did not understand the witness then a while ago when he read from his letter. I understood his letter to state that the claims filed embracing items which would have been cognizable by the Mixed Claims Commission amounted to about \$3,700,000.

Mr. BONYNGE. Yes, and then there was another statement immediately following that.

Senator JONES of New Mexico. And then you made a statement later on that those claims might be reduced in amount as much as 50 per cent.

Mr. BONYNGE. Here is what the letter says:

I am inclosing a copy of the estimate thus made, showing the maximum amount allowable on claims now on file to be the sum of approximately \$3,750,000.

Senator JONES of New Mexico. Yes; that is what I understood.

Mr. BONYNGE (continuing reading):

This is, in my opinion, an extremely liberal estimate. In all probability the total amount that would be finally allowed after thorough examination of the claims would not much, if any, exceed 50 per cent of the estimate thus made.

Senator JONES of New Mexico. That is just my understanding exactly. So we have got claims which we know to amount to about

\$3,700,000, consisting of items which would come within the jurisdiction of the Mixed Claims Commission, and probably half of it would be meritorious.

The CHAIRMAN. That is as I understood it.

Senator GEORGE. Well now, right there, Mr. Chairman, I have here a letter from one of the holders of certain of these bonds in which he makes these statements:

These securities were in Germany and were acquired before the war, representing a value in excess of \$67,000,000 according to Senate Document No. 416, Sixty-sixth Congress, third session, pages 8 and 9.

He is now referring to the total bonds, of course, not his particular claim.

I understand that the amount of awards made by the Mixed Claims Commission upon the principal of bonds which were sequestered by the German Government amounts to less than \$100,000.

Is that true?

Mr. BONYNGE. No, that can not be true. I can not give you the amount offhand, but that can not be true. That can not be true.

Senator McLEAN. Well, does your letter state when these bonds mature?

Senator GEORGE. This particular claimant, Emil Kersten, who was formerly a German national and is now an American citizen, and lives in my State, merely states that his bonds were purchased prior to the war.

Mr. BONYNGE. Were they in the United States?

Senator GEORGE. No; they were in Germany, and were left there for the purpose of proper and prompt presentation.

The CHAIRMAN. But he does not say whether they fell due during the war period or not?

Senator GEORGE. No, he does not say that. He says they were purchased prior to the war.

The CHAIRMAN. That would determine the question.

Senator GEORGE. Mr. Chairman, I wish to put in the record at this point this letter, because it is a very comprehensive letter, and quotes—but I do not undertake to say accurately—not only from Senate documents but from declarations made by Senators at the time of the consideration of the Versailles treaty, including a quotation from the present Secretary of State, and also a quotation from Senator Lodge. I would like to put this letter in the record, and I would also like to put in a letter from another former German national, now an American citizen residing in my State—Mr. Hochstein, who now resides at Albany, Ga., which is to the same general effect, because they state what appear to be facts, and if they be facts upon an examination they ought to be taken into consideration by the Senate.

The CHAIRMAN. Was he a German national at the time of the war?

Senator GEORGE. No; a former German national. A citizen of the United States at the time of the war.

(The two letters from Emil Kersten and Max Hochstein addressed to Senator George are here printed in the record in full, as follows:)

COLUMBUS, GA., January 5, 1926.

HON. WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR GEORGE: I am in receipt of your letter of December 9 in the matter of my claim against the Government of Germany for which I thank you.

I have filed a claim for my losses which is in duplicate form, one having been filed with the Department of State and the other with the Alien Property Custodian. My claim is based upon the sequestration of my securities by the German Government.

As my case is typical of the thousands referred to in the inclosed statement made by my bankers, Zimmermann & Forshay, I am sending you such statement as it explains how Germany tied up my bonds during the war period. I bought my bonds before the outbreak of the war through Zimmermann & Forshay and their statement completely covers the facts in my case.

I would like to call to your attention the great injustice that has been done thousands of our citizens which would not have occurred had Senator Underwood's plan been adopted by the Senate several years ago, which provided for the creation of a commission to adjudicate the claims of American citizens against Germany. I know of a great many former nationals of Germany now living in Georgia who are similarly situated as myself.

During the Sixty-seventh Congress, second session, Senator Underwood introduced S. 3852, a bill to amend an act entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes." On July 27, 1922, the Committee on Judiciary held hearings, and on page 12 thereof, the following appears:

"Senator CUMMINS. What would you do with the case of a claim of an American citizen against Germany for seizure in Germany of the individual property of the American citizen? Now, I am told that Germany offers to pay back—offers to pay American citizens their claims. But they seized the property when the mark was worth, we will say, 20 cents, and they want to pay it back in a mark that is not worth 1 cent. Would the failure on the part of the German Government to make honest returns for the property so seized be a claim against the German Government that we could try in an American court?

"Mr. PALMER. Yes, sir; it is expressly 'nominated in the bond.'

"Senator CUMMINS. What is that?

"Mr. PALMER. I say it is expressly so 'nominated in the bond.' It is in the treaty just that way. Germany agreed not merely to pay the claim of the American citizen whose property was taken by Germany under a law similar to ours, but Germany agreed to restore the property, and 'restore' means to put the American citizen back in the position he was in when Germany took the property."

Hon. A. Mitchell Palmer's testimony approved of Senator Underwood's bill and gave all of its provisions very serious consideration. It was his judgment that American owners of bonds which were sequestered by Germany would have recovered their losses.

One of the largest single categories of damages filed by American citizens against Germany as a consequence of the war covered American-owned securities which the German Government prevented American citizens from either disposing of or collecting what was owed to them. These securities were in Germany and were acquired before the war, representing a value in excess of \$67,000,000, according to Senate Document No. 419, Sixty-sixth Congress, third session, pages 8 and 9. I understand that the amount of awards made by the Mixed Claims Commission upon the principal bonds which were sequestered by the German Government amounts to less than \$500,000.

The Senate should know the total amount of awards made by the Mixed Claims Commission upon the principal of bonds for which claims were filed by our people, and you undoubtedly will be amazed at the small amount. When you consider that the proceeds of the bonds have been used by German debtors to increase their property holdings, the replacement value of which is far greater to-day compared to the time when the bonds were sold before the war, you will appreciate the great profit the German debtors will make at our expense by reason of the German Government's war regulations.

As an example, we take the case of A, a German national, who issued bonds payable in marks and sold them in 1910 to B, an American citizen residing in the United States. The proceeds of the bonds were used by A to increase his property holdings in the United States. B left his bonds upon deposit with a bank in Germany so that the coupons could be presented to the main office of the debtor, A. On August 9, 1917, the German Government sequestered B's bonds. Later when our trading with the enemy act was passed, the custodian seized A's property in the United States. A's property was partially created out of proceeds of the bonds sold to B. Now, under the provisions of the bill which passed the House, B can not recover the debt owing to him by A and the result is that A will get his property returned to him and make a handsome profit at B's expense because the marks in which the debt was owing have become worthless.

However, before marks became worthless, B was prevented from realizing upon his bonds because of the Germany's war orders, which tied up the bonds in such a way that B could not dispose of them when marks were of value.

These American creditors of German debtors should have their rights and remedies protected in the fullest measure by our Senate. To permit German debtors to borrow money from our nationals and have the evidence of such indebtedness sequestered by the German Government without holding the Government of Germany liable would certainly be most inconsistent with our policy of the inviolability of private property, especially as we are going to compensate German nationals for ships, radio stations, and patents according to the value at the time we took them over.

I can not conceive of our Senate adopting so liberal a policy with reference to our late enemies and cast aside the appeals of our own citizens for the application of the same policy to their own cases.

Mr. Mills, who sponsored the bill in the House of Representatives, said that an American citizen could recover 16 cents upon these securities in the event that it could be proven that the claimant was unable to remove his bonds because of the war regulations of the German Government. I want you to know that this is not so, because that fact has been proven that Germany's war orders of "Measures of economic retaliation against the United States" prohibited American citizens from either removing their bonds or selling them, and is born out by the report of the Ways and Means Committee on page 7, and I now quote from its report:

CLAIMS OF AMERICAN NATIONALS

"During the war the German Government seized and sequestered property of American citizens in Germany. Moreover, even prior to our formal entrance into the war, war regulations of the German Government made it impossible for our citizens to withdraw much of their property from Germany, more specifically bank deposits and securities."

The Mixed Claims Commission created by an Executive agreement, not approved by the Senate, containing an unreasonable limitation of time in which to file claims which was set forth at six months, has frozen out every American owner of bonds which were sequestered by the German Government. You will hear a great deal about the difference between tweedledum and tweedledee from the commission as to how this happened, but I believe the matter should be fully investigated by your committee. However, this agreement was ratified by the German Reichstag in 1922.

Please bear in mind that Germany did not actually seize much American property. It accomplished that purpose in another way by enacting war legislation which prohibited American citizens from disposing of their securities in Germany which was an indirect method of sequestration.

Senator Copeland has introduced an amendment to the alien property bill which has been referred to the Committee on Finance. This amendment provides that the Government of Germany shall be liable for the sequestration of American-owned securities which came under the control of the German Government during the war period.

As the foreign policies of our Government are to a large extent defined by our Senate as evidenced by our treaties with foreign governments, I do not believe it was the intention of the United States Senate when it ratified the treaty of Berlin to permit the Government of Germany to sequester American-owned securities and profit thereby at our expense.

Senator Lodge made a brief statement in the Senate, September 24, 1921, regarding the treaty of peace which President Harding had negotiated with Germany in which he said:

"It was necessary in making this treaty to make it in such a way that it would conform to the resolution passed by the Congress, and that was a work of no little difficulty. The resolution was general in its terms, elaborate in regard to the protection of claims of citizens of the United States, and stated broadly that we should insist on reserving all rights and advantages that came under the treaty of Versailles, whatever they might be."

"We are not limited by the Versailles treaty as to the character of claims for damages; we can make any claims we like."

Senator Kellogg in discussing the treaty of peace in the Senate, September 28, 1921, said:

"Another provision of the treaty for peace for our benefit as well as the benefit of the other allied powers is the settlement of debts owing from German nationals to American nationals."

Respectfully yours,

(Signed) EMIL KERSTEN.

COLUMBIA GA., 645 Broad Street.

LIBERTY THEATER,
Albany, Ga., January 8, 1927.

Senator W. F. GEORGE,

Senate Office Building, Washington, D. C.

MY DEAR SENATOR: Receipt is acknowledged of your letter of the 28th ultimo, for which I thank you.

The alien property bill, unless amended, permits a flagrant disregard of the rights of American citizens in the matter of the recovery of their losses occurring by reason of the German Government's measures of war legislation termed sequestration, which covered American-owned bonds located in Germany during the war period.

I sustained a substantial loss through the act of the Government of Germany in sequestering my securities during the war period. I have filed a claim against the Government of Germany, and it is now pending before the Department of State. Through the arbitrary action of some of the officials they are disposed to take any action in my behalf because of a certain time limit which was fixed by an alleged agreement without the approval of the United States Senate. The time limit is six months and is certainly an unreasonably short space of time in which American citizens are given an opportunity of presenting their claims against Germany. No such agreement was ever entered into restricting German subjects from filing claims with the Alien Property Custodian. I submit that I have been discriminated against by my own Government.

It has come to my attention that it has been stated during the course of the debate on the floor of the House of Representatives in the passage of the alien property bill that if an American citizen was unable to dispose of his securities in Germany because of the act of the German Government that such citizen can recover his losses.

Such a statement does not conform with the actual fact in the prosecution of a claim by an American citizen under our treaty with Germany because our experience discloses that in the prosecution of the above claim I have proven that Germany's war legislation in effect against securities owned by our people absolutely precluded me from disposing of them.

The Senate of the United States should very carefully examine the question of the rights of American citizens with respect to just how far Germany went in dispossessing our people of their securities during the war period and preventing them from doing anything with their securities until after the war was over when the currency in which they were payable had depreciated to the point where it was only worth a few cents.

If we were to compensate Germans for the property we took over on the basis of the value in marks as indicated in the owner's books in Germany at the time we seized their property and now tender such owner the mark currency he certainly would positively decline to accept it because such currency is worthless. That being the case it's difficult to reconcile the desire of German debtors to pay their American creditors for loans received before the outbreak of the war in the same worthless currency.

These loans were converted by the borrower to his own enrichment at the expense of the creditor. To permit the debtor to impose upon the creditor the receipt of worthless paper in payment would be to permit an abrogation of the contract on which the loan was founded, and to profit by reason of Germanys retaliation against the United States would amount to a monstrous wrong. Before the German custodian returned securities to the American owners after the signing of the armistice, I understand that through the alleged complicity of the officials of the German Government, hundreds of millions of mark currency was circulated in 1919 and was so made to appear that such currency had been issued by the Government of Germany in 1910.

The printing of such bogus and counterfeit currency impaired the vested property rights of American citizens because it resulted in making worthless their securities payable in mark currency. This occurred while American-owned bonds were tied up by Germany's war legislation.

The German alien property custodian's office in Germany functioned in a way familiar to our custodian in the United States. The securities owned by American citizens came under the control of the German custodian, who absolutely prevented the removal from Germany of the property when it was of value, and furthermore enforced the laws of Germany denying payment of debts owing to American nationals. When the Government of Germany took control over the property, mark currency possessed a gold value of approximately 14 cents per mark, and when the German custodian returned the property the mark was valued at practically nothing, because of the manner in which Germany had administered its finances in the prosecution of the war.

At the time the bonds were purchased, repayment of the loan was protected according to the laws of Germany in that the marks were convertible into gold on a basis of 23.8 cents to the mark. However, Germany suspended the law covering the convertibility of its paper currency.

Alphonse Rivier, an authority on international law, maintains diplomatic intervention to enforce payment of public debts of a nation which administers its finance badly and betrays the confidence of individuals placed in it when they subscribe to loans and says:

"The fortunes of individuals, subjects of the state, forms an element of the riches and prosperity of the state itself. It has an interest in the maintenance and increase of that fortune. If it is compromised by the act of a foreign state which administers its finances badly, which betrays the confidence of individuals placed in it when they subscribed to loans on conditions that are not observed, and which violates its engagements in regard to them, the State to which the injured individuals belong is evidently authorized to take their interest in hand in any manner which it shall seem suitable; it may proceed either by diplomacy or by reprisals. It may see to it, perchance, according to the circumstances, that their subjects are better treated than those of other states, or other than those of the insolven state." (Principes due droit des gens, Paris, 1896, I, 272.)

Martens has stated, as a general proposition of international law, that diplomatic interposition was justified, if—

"The debtor State adopts measures of domestic finance so fraudulent and iniquous, so evidently repugnant to the first principles of justice, with so manifest an intention of defeating the claims of its creditors.

"When a State has recourse to violent financial operations to do away with inherent obligations to satisfy its indebtedness, the violation of property rights which results is sufficient to authorize other nations to take up in this respect the cause of their subjects and employ for their protection every means authorized by the law of nations."

Vattel, the noted international authority, has stated in his treatise:

"Loans made for the services of a State, debts created in the administration of the public affairs, are contracts of strict right, obligatory upon the State and the entire people. Nothing can dispense with the payment of such debts. Since they were contracted by a legitimate power, the right of the creditor is sacred. Whether the money borrowed has turned out for the profit of the State, or whether it has been dissipated in follies, is not the affair of the one who lends. He has confided his property to the nation; it is bound to restore."

I can not conceive of our Government permitting German debtors to escape complete liability upon their bonded indebtedness owing to American citizens thereby causing our own people to lose their entire investments made before the war. Surely American creditors are entitled to something. There should not be an absolute whitewashing of German debtors' obligations owing to our own citizens, but it seems that that has taken place up to the present times.

The action of the German Government in sequestering American securities should not be camouflaged by anyone who makes the charge of speculation on the part of American citizens. Some of our people may have been very imprudent in loaning their dollars to German debtors, but this act of theirs should not prevent them from receiving the same measure of favorable action which has been taken in behalf of those who had deposits in German banks which were sequestered and who have been given a 16-cent compromise for every mark they deposited up until the time we entered the war, April 6, 1917. This is certainly a discrimination against one class of American citizens.

I can conceive of cases in the matter of loans made by American citizens to Germans which have turned out to the profit of such creditors. However, in the matter of bank deposits, I can understand where the depository in Germany sustained a loss equal to that of the American depositor caused through the debasement of mark currency. Why there should be any discrimination in favor of those who had bank deposits in the matter of the proof to be submitted compared to that which an American bondholder must submit, I can not understand the technical reasons therefor.

It would be a gross injustice to American citizens to permit German debtors, and more especially the Government of Germany, to cause our country to suffer a substantial economic loss and corresponding gain to Germany and its resident debtors if Germany is permitted to escape liability for its action in sequestering American-owned securities.

Any policy of our Government returning German property should be made sufficiently comprehensive to afford equal treatment to American citizens in the matter of their claims against Germany for the value of their property that was taken over by that Government during the war period.

Very truly yours,

MAX HOCHSTEIN.

Mr. BONYNGE. Before I leave I would like to say something about the Austrian matter.

Senator JONES of New Mexico. Yes.

Mr. BONYNGE. The commissioner was appointed in November, was it not—November 25? The date of the agreement was November 26, 1924, and ratifications were exchanged December 12, 1925. Up to date there have been filed 1,572 claims against Austria and Hungary. Austria did not, it is claimed, have any exceptional war measures such as the appointment of an Alien Property Custodian or an officer similar to an Alien Property Custodian. There was no legislation in Austria, so far as we have ascertained, that prohibited Austrian nationals from paying their American debtors if they wanted to. We have very few claims against Austria arising under the reparations clauses. Practically all of those claims were also claims against Germany, and were adjudicated before the Germans' claims commission.

Fully 80 per cent of the claims that have been filed against Austria and Hungary are based upon bonds, or private debts arising under the economic clauses of the treaty, and not under the reparation clauses. Those claims are filed in many instances for the full face value of the bonds at the normal rate of exchange. Of course, that can never be recovered. If you take the total amount of the claims as they filed them it would appear to be somewhere around \$25,000,000 or \$26,000,000. But, of course, nothing like that amount can be allowed, because in many of these cases, and practically all of them, they are asking either for the full face value of the bond which has not matured, or they are asking for the amount that they paid for the bond. And in most cases they will only be able to recover the interest on the bonds that matured. And as I showed before, if they are Government bonds the property in the possession of the

Alien Property Custodian is not subject to the claims for debts due by the Government for valorization.

The time for filing claims against Austria and Hungary does not expire until the 25th of this month. We are not getting very many more claims at the present time. The total, as I have said, now is some 1,572, aggregating on their face about \$25,000,000. But my estimate in going over those claims is that the total amount to be allowed against Austria and Hungary will hardly exceed \$5,000,000. That will depend very largely upon whether we are able to arrive at some similar agreement with Austria and Hungary for the valorization of their debts.

The pre-war rate of exchange, so far as Austria and Hungary is concerned, was very low. As stated, under the treaty it was the average cable transfer rate prevailing one month before we entered the war. One month before we entered the war with Austria-Hungary was November, 1917. We entered the war with those countries in December, 1917. In November, 1917, the kronen had already very greatly depreciated. According to the figures I have, the average cable rate prevailing in November, 1917, was 9.4 cents to the kronen instead of a little over 20 cents. So that the rate was very low. The Austrians contend that the rate was 9.2 cents. There is only a difference of two-tenths of a cent between us. But they are making the same contention that Germany made, that Austria is not liable for its debts as debts, because we did not adopt the clearing-office system, and they do not have to valorize them, and that they are only liable for damages that resulted by reason of exceptional war measures, if we can establish that exceptional war measures applied to the debts of our nationals.

I am endeavoring to arrive at some adjustment with them similar to what I arrived at with Germany. Up to the present time we have not been able to arrive at such an adjustment with Austria.

Hungary has agreed to submit the matter to the commissioner. They offered 2½ cents to the kronen for all debts. I refused to recommend that to the State Department. They say they can not go beyond that, because since the Versailles treaty they have entered into conventions with Italy, France, Belgium, and other countries, fixing as the rate for their debts that those countries have agreed to take about 10 per cent of the normal rate, which would be a little over 2 cents, not to exceed 2½ cents. And in those conventions they have what is known as the favored-nation clause, that if they give any other country a better rate they must give the same to those countries. They say by reason of that provision they can not agree to a rate to exceed 2½ cents.

The CHAIRMAN. Have you looked that up to see whether they did have that favored-nation clause?

Mr. BONYNGE. Yes.

The CHAIRMAN. They all wanted it in their settlements with us.

Mr. BONYNGE. Yes, I have seen those conventions. And that makes it difficult to arrive at an adjustment with them. Now they have suggested that if we can not arrive at that adjustment that we ask the various governments—and I have not even consulted the State Department as to this yet—to authorize the commissioner to establish a rate that would be fair under the circumstances. Hungary has agreed to do that. Austria has not yet agreed to do

it. So that at the present time it is a little difficult until we can get those matters adjusted, and the time has expired for filing claims, to provide for the adjustment and payment of Austrian and Hungarian claims. If this bill or some similar bill was passed and we succeed in adjusting our difficulties, I do not think it would be difficult then to frame some similar method of taking care of Austrian and Hungarian claims, as that provided for the German claims.

The CHAIRMAN. How much of Austrian property have you?

Mr. BONYNGE. The Alien Property Custodian can tell you, but I understand it is something over \$12,000,000.

The CHAIRMAN. That is what I thought.

Mr. BONYNGE. About two million odd for unallocated interest, and about \$10,000,000 of principal. Very little Hungarian property, I understand.

The CHAIRMAN. Very little.

Mr. SUTHERLAND. I will say that the figures for Austria and Hungary together are \$12,478,182. That is an estimate, of course.

Senator GERRY. How much for Austria?

The CHAIRMAN. Have you it separated there?

Mr. SUTHERLAND. I have not it separated, and I do not know that it can be separated, but I will see if it can be, and I will give it to you.

Senator GERRY. Well, have you not got to when it comes to the question of entering into the final settlement?

Mr. SUTHERLAND. Yes.

The CHAIRMAN. The Austrian Government claims about \$9,000,000 out of the \$12,000,000?

Mr. BONYNGE. Principal?

The CHAIRMAN. Principal; yes.

Mr. BONYNGE. And then there is unallocated interest.

Mr. SUTHERLAND. It will, of course, eventually be separated.

Senator JONES of New Mexico. Now, what is the amount of the claims against Hungary?

Mr. BONYNGE. Well, that is included in this estimate that I gave you of about \$5,000,000 for the two. I think the claims against Hungary will not exceed \$1,000,000.

Senator JONES of New Mexico. Well, what I am getting at is, have we property here sufficient to pay the claims against Hungary?

Mr. BONYNGE. I think not. Not of Hungarian property. But if we apply any deficiency that there may be of Hungary as against the property of Austria, we have.

Senator JONES of New Mexico. Well, does the tripartite agreement provide that we may use Austrian property to pay Hungarian claims?

Mr. BONYNGE. There is no provision in the agreement with reference to how the claims shall be paid. The agreement provides only for the adjudication of the validity and the amount of the claims.

Senator JONES of New Mexico. I see. Well, is there anything in the treaty with Hungary?

Mr. BONYNGE. That same provision that I read, paragraph 4 following section 298, which provides that if there is a deficiency, any unsatisfied claims against one of the other of the enemy powers,

you may use the property of another enemy power to make up the deficiency that arises under the economic clauses.

Senator JONES of New Mexico. Then, under that provision, we would have the right to use Austrian property for which to pay Hungarian claims?

Mr. BONYNGE. Yes.

Senator JONES of New Mexico. Well, there is a like provision in the German treaty.

Mr. BONYNGE. Yes; there is a like provision in the German treaty, the same provision.

Senator JONES of New Mexico. Well, what do you say as to whether we should pay those claims out of German property, or Austrian property, or where?

Mr. BONYNGE. Well, there is plenty of Austrian and Hungarian property together to more than take care of the Austrian and Hungarian claims.

Senator JONES of New Mexico. Are there any claims against Turkey?

Mr. BONYNGE. We had one claim that was filed that arose during belligerency against Turkey, and as Turkey was an ally of Germany, Germany was held liable for it. And so, with reference to the reparation claims against Austria that arose during belligerency, several of those claims were filed against Germany and have already passed to an award against Germany.

Senator JONES of New Mexico. Through the Mixed Claims Commission?

Mr. BONYNGE. Through the Mixed Claims Commission, certainly.

Senator JONES of New Mexico. And any claims against Bulgaria?

Mr. BONYNGE. I have never heard of any claims against Bulgaria.

Senator JONES of New Mexico. So then this Mixed Claims Commission is allowing claims of American nationals against Germany on account of claims really originating against Austria and Hungary and Turkey?

Mr. BONYNGE. Reparation claims.

Senator JONES of New Mexico. Reparation claims?

Mr. BONYNGE. Reparation claims, yes. If it arose during the period of belligerency, after we entered the war. If it arose during neutrality only Germany would be liable for the acts of its own Government.

Senator JONES of New Mexico. Well, then, all the claims are being presented to the commission which has to adjudicate the claims against Austria and Hungary which could not be allowed by the Mixed Claims Commission created between the United States and Germany?

Mr. BONYNGE. Mostly on account of debts, bonds, and securities of the Austrian and Hungarian Governments. Between 80 and 90 per cent of them. And some for requisitions by Austria and Hungary of American property, or enforced military service, or matters of that kind.

Senator JONES of New Mexico. Well, is there any contention anywhere that any claims should be presented to the Mixed Claims Commission or to the Austro-Hungarian Commission, or that they should not be so presented? Is there any contention between any of

the parties as to the tribunal which should adjudicate the claim, or pay?

Mr. BONYNGE. There is no question about which tribunal should adjudicate the validity or the amount of the claims.

The CHAIRMAN. Is that all, Senator?

Senator JONES of New Mexico. I think so.

The CHAIRMAN. I saw Congressman Green yesterday in relation to the letter signed by the representative of the American claimants and the representative of the German claimants as to the agreement with the provisions of the bill as now before the committee, and it was sent to me, as I stated, in confidence. Congressman Green said that he was perfectly willing that it should go into the record at the place designated yesterday. I also spoke to Mr. Sidley and also Doctor Kiesselbach, and they both were willing that it should go into the record. So I will give the reporter a copy of it and have it put into the record at the place designated in yesterday's hearing.

Senator JONES of New Mexico. That is entirely satisfactory.

The CHAIRMAN. The committee will stand adjourned until 10 o'clock to-morrow.

(Thereupon, at 12 o'clock noon, an adjournment was taken until 10 o'clock a. m., the next day, Friday, January 14, 1927.)

RETURN OF ALIEN PROPERTY

FRIDAY, JANUARY 14, 1927

UNITED STATES SENATE,
COMMITTEE ON FINANCE.

Washington, D. C.

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

Present: Senators Smoot (chairman), McLean, Reed of Pennsylvania, Ernst, Shortridge, Edge, Jones of New Mexico, Harrison, and George.

Present also, Hon. Howard Sutherland, Alien Property Custodian; Dr. J. W. Kiesselbach, German commissioner on the Mixed Claims Commission; and Dr. Karl von Lewinski, German agent before the Mixed Claims Commission.

The CHAIRMAN. If the committee will come to order we will continue the hearings. The committee requested the Secretary of State to furnish copy of the joint resolution approved April 6, 1922, authorizing the Secretary of the Treasury to extend the maturity of the Austrian relief bond held by the United States, and to subordinate the lien enjoyed thereby to that of the Austrian guaranteed 20-year loan.

Also a memorandum summarizing the correspondence between the Department of State and the Austrian and Hungarian Governments leading up to the conclusion of the tripartite claims convention.

The Secretary of State has this morning submitted that information, and I think the committee requested that it be printed in the record. Senator Jones, I think that was your request. Do you want this printed at the proper place in the record, or shall it be printed in to-day's record?

Senator JONES of New Mexico. Why, wherever it is more convenient.

The CHAIRMAN. Then it will be printed in this morning's record at this point.

(The papers transmitted to the Committee by the Secretary of State are here printed in the record in full, as follows:)

DEPARTMENT OF STATE,
WASHINGTON, January 13, 1927.

MY DEAR SENATOR SMOOT: I take pleasure in transmitting herewith for appropriate insertion in the record of my recent testimony before the Senate Committee on Finance the documents and memoranda listed below which contain the information requested by the committee. Copies of the report of the Second Committee of Experts referred to on page 22 of the stenographic transcript have already been forwarded to the committee, as have copies of the tripartite claims convention, United States, Austria, and Hungary, referred to on page 59 of the stenographic transcript.

The papers transmitted herewith are as follows:

"Copy of the joint resolution approved April 6, 1922, authorizing the Secretary of the Treasury to extend the maturity of the Austrian relief bond held by the United States, and to subordinate the lien enjoyed thereby to that of the Austrian guaranteed 20-year loan. (Referred to on p. 59 of the stenographic transcript.)

"Memorandum summarizing the correspondence between the Department of State and the Austrian and Hungarian Governments leading up to the conclusion of the tripartite claims convention. (Referred to on p. 67 of the stenographic transcript.)"

Memorandum regarding the notices issued by the State Department or the Mixed Claims Commission regarding the limitation of time for the presentation of claims. (Referred to on p. 70 of the stenographic transcript.)

Memorandum regarding the status of American claims against Turkey and Bulgaria. (Referred to on p. 72 of the stenographic transcript.)

Memorandum regarding American claims against Germany submitted after the expiration of the time limit fixed by the exchange of notes of August 10, 1922. (Referred to on pp. 77 and 78 of the stenographic transcript.)

Memorandum listing claims conventions or protocols concluded by the Government of the United States and submitted to the Senate for advice and consent. (Referred to on p. 100 of the stenographic transcript.)

Memorandum listing additional cases where claims conventions have not been submitted to the Senate for advice and consent.

I am, my dear Senator Smoot,

Sincerely yours,

FRANK B. KELLOGG.

[PUBLIC RESOLUTION—No. 46—67TH CONGRESS]

[S. J. Res. 160]

JOINT RESOLUTION Authorizing the extension, for a period of not to exceed twenty-five years, of the time for the payment of the principal and interest of the debt incurred by Austria for the purchase of flour from the United States Grain Corporation, and for other purposes

Whereas the economic structure of Austria is approaching collapse and great numbers of the people of Austria are, in consequence, in imminent danger of starvation and threatened by diseases growing out of extreme privation and starvation; and

Whereas this Government wishes to cooperate in relieving Austria from the immediate burden created by her outstanding debts; Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby authorized to extend, for a period not to exceed twenty-five years, the time of payment of the principal and interest of the debt incurred by Austria for the purchase of flour from the United States Grain Corporation, and to release Austrian assets pledged for the payment of such loan, in whole or in part, as may in the judgment of the Secretary of the Treasury be necessary for the accomplishment of the purposes of this resolution: *Provided, however,* That substantially all the other creditor nations, to wit: Czechoslovakia, Denmark, France, Great Britain, Greece, Holland, Italy, Norway, Rumania, Sweden, Switzerland, and Yugoslavia shall take action with regard to their respective claims against Austria similar to that herein set forth. The Secretary of the Treasury shall be authorized to decide when this proviso has been substantially complied with.

Approved, April 6, 1922.

MEMORANDUM SUMMARIZING THE CORRESPONDENCE BETWEEN THE DEPARTMENT OF STATE AND THE AUSTRIAN AND HUNGARIAN GOVERNMENTS LEADING UP TO THE CONCLUSION OF THE TRIPARTITE CLAIMS CONVENTION

In a memorandum dated August 30, 1922, the Austrian chargé d'affaires requested the assistance of the Department of State in having certain amendments submitted to the resolution introduced on June 28, 1922, by Representative Winslow. The purpose of the suggested amendments was to provide for the release of the Austrian property held by the Alien Property Custodian.

In a note dated October 28, 1922, the department replied to the above-mentioned memorandum stating that numerous claims had been filed with it by American citizens against the Imperial and Royal Austro-Hungarian Government for losses resulting from the torpedoing of vessels by submarines of that Government, for military requisitions made by that Government, and for damage or injury to persons and property. The department referred to the provisions of the treaty of August 24, 1921, between the United States and Austria under which certain rights were secured to the United States with respect to the Austrian property held by this Government, and pointed out that inasmuch as no suitable provision for the settlement of American claims growing out of the war had been made by the Austrian Government, the Department of State was not in a position to take the action requested by the Austrian authorities.

During the winter of 1922 the department approached both the Austrian and Hungarian ministers in Washington with reference to the creation of a claims commission, stating that the United States would probably suggest the establishment of a claims commission similar to the German-American claims commission. These informal representations were made the subject of subsequent oral discussion, but resulted in no definite agreement.

In December, 1923, the department telegraphed to the American legations in Vienna and Budapest requesting that informal inquiries be made of the Austrian and Hungarian Governments, respectively, as to whether those Governments would be disposed to work out a plan for setting up a Mixed Claims Commission similar to that between the United States and Germany. In reply to these inquiries, the Austrian and Hungarian Governments stated that they were willing to participate in negotiations for setting up such a commission.

Early in 1924 the department transmitted appropriate instructions to the American Legations in Vienna and Budapest, together with the text of a draft convention, as follows:

"The United States of America, Austria, and Hungary, being desirous of determining the amounts to be paid by Austria and by Hungary in satisfaction of their obligations under the treaties concluded by the United States with Austria on August 24, 1921, and with Hungary on August 29, 1921, which secure to the United States and its nationals rights specified under a joint resolution of the Congress of the United States of July 2, 1921, including rights under the treaties of St. Germain-en-Laye and Trianon, respectively, have resolved to submit the questions for decision to a commissioner and have appointed as their plenipotentiaries to sign an agreement for that purpose.

"The President of the United States of America.

"Austria,

"And Hungary,

"Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

"The three Governments shall agree upon the selection of a commissioner who shall pass upon all claims for losses, damages, or injuries suffered by the United States or its nationals embraced within the terms of the treaty of August 24, 1921, between the United States and Austria and/or the treaty of August 29, 1921, between the United States and Hungary, and/or the treaties of St. Germain-en-Laye and/or Trianon, and shall determine the amounts to be paid to the United States by Austria and by Hungary in satisfaction of all such claims (excluding those falling within paragraphs 5, 6, and 7 of Annex I to Section I of Part VIII of both the treaty of St. Germain-en-Laye and the treaty of Trianon) and including the following categories:

"(1) Claims of American citizens arising since July 31, 1914, in respect of damage to or seizure of their property, rights, and interests, including any company or association in which they are interested, within the territories of either the former Austrian Empire or the former Kingdom of Hungary as they respectively existed on August 1, 1914;

"(2) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to or death of persons, or with respect to property, rights, and interests, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

"(3) Debts owing to American citizens by the Austrian and/or the Hungarian Governments or by their nationals.

ARTICLE II

"Should the commissioner for any cause be unable to discharge his functions, a successor shall be chosen in the same manner that he was selected. The commissioner shall hold a session at Washington within two months after the coming into force of the present agreement. He may fix the time and the place of subsequent sessions according to convenience.

ARTICLE III

"The commissioner shall cause to be kept an accurate record of the questions and cases submitted and correct minutes of proceedings. To this end each of the Governments may appoint a secretary, and these secretaries shall act together as joint secretaries and shall be subject to the direction of the commissioner.

ARTICLE IV

"The three Governments may designate agents and counsel who may present oral or written arguments to the commissioner under such conditions as he may prescribe.

"The commissioner shall receive and consider all written statements or documents which may be presented to him, in accordance with rules which he may prescribe by or on behalf of the respective governments in support of or in answer to any claim.

"The decisions of the commissioner shall be accepted as final and binding upon the three Governments.

ARTICLE V

"Each Government shall pay its own expenses, including the compensation of the secretary appointed by it and that of its agent and counsel. All other expenses which by their nature are a charge on the three Governments, including the compensation of the commissioner and such employees as he may appoint to assist him in the performance of his duties, shall be borne by the three Governments in equal moieties.

ARTICLE VI

"The present agreement shall come into force on the date of its signature.

"In faith whereof the above-named plenipotentiaries have signed the present agreement and have hereunto affixed their seals.

"Done in triplicate at the city of Washington this day of 1924."

The above-quoted draft convention was slightly modified during the course of the negotiations. The text of the agreement finally reached by the three Governments appears in a pamphlet entitled "Treaty Series No. 730."

MEMORANDUM REGARDING THE NOTICES ISSUED BY THE STATE DEPARTMENT OR THE MIXED CLAIMS COMMISSION REGARDING THE LIMITATION OF TIME FOR THE PRESENTATION OF CLAIMS

It appears from the records of the department that the text of the convention with Germany providing for the creation of the Mixed Claims Commission was issued to the press on August 10, 1922, the date of its signature. A copy of this announcement is attached hereto.

On October 4, 1922, the department issued the following statement:

"The first meeting of the commission appointed under the agreement of August 10, 1922, between the United States and Germany will be held in room 212, Department of State, on Monday morning, October 9, at 10:30 o'clock."

On November 2, 1922, the New York Times published an article regarding the work of the Mixed Claims Commission. This article read in part as follows:

"Circular letters are being sent out by the State Department to all American claimants against Germany instructing them to present memorials of their claims to the State Department by January 1, next."

This article was based on information given to the press by the Department of State. A copy of the circular letter mentioned is attached hereto.

On December 29, 1922, the department issued the following statement to the press:

"In view of the great pressure attending the filing of claims for presentation before the Mixed Claims Commission, United States and Germany, by January 1, in accordance with the notice heretofore given by the State Department, the Secretary of State has decided to extend the time within which claims may be filed until the 15th day of January, 1923. No further extension will be granted."

This action was taken on the recommendation of the American agent who had received a great number of inquiries as to whether claims must be filed by January 1, 1923.

After January 15, 1923, the American agency referred all inquiries as to the filing of claims to the Department of State, and the department received and subsequently transmitted to the agency for presentation all claims filed with it up to and including April 9, 1923, the last date on which notice of claim could be given under the agreement between the two Governments and Rule IV (d) of the Mixed Claims Commission.

In those cases where it has been found that claims had not been notified to the Mixed Claims Commission by the American agency prior to April 9, 1923, but had been of record in the Department of State or in the American agency as of that date, the German agent has acquiesced in their subsequent presentation to the commission. In these cases where the claim was not of record in the agency or in the Department of State as of April 9, 1923, the claim has been considered a "late claim."

It does not appear that the Mixed Claims Commission issued any notices to the press regarding the limitation of time for the presentation of claims.

[For the press]

DEPARTMENT OF STATE,
August 10, 1922.

An agreement between the United States and Germany, providing for the determination of the amount of the claims against Germany, was signed to-day in Berlin. This agreement provides for a claims commission composed of two commissioners and an umpire. One commissioner is to be named by each Government, and the two Governments are to agree upon an umpire. The umpire is to decide finally upon any questions as to which the commissioners may disagree.

Simultaneously with the signing of the agreement, the German Government expressed its desire to have an American citizen appointed as the umpire and requested the President of the United States to make the designation accordingly. Pursuant to this request, the President has named as umpire, William R. Day, Associate Justice of the United States Supreme Court. The name of the American commissioner will be announced later.

The agreement is as follows:

"The United States of America and Germany, being desirous of determining the amount to be paid by Germany in satisfaction of Germany's financial obligations under the treaty concluded by the two Governments on August 25, 1921, which secures to the United States and its nationals rights specified under a resolution of the Congress of the United States of July 2, 1921, including rights under the treaty of Versailles, have resolved to submit the question for decision to a mixed commission and have appointed as their plenipotentiaries for the purpose of concluding the following agreement:

"The President of the United States of America——; and

"The President of the German Empire——;

"Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

"The commission shall pass upon the following categories of claims which are more particularly defined in the treaty of August 25, 1921, and in the treaty of Versailles;

"(1) Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights, and interests, including

any company or association in which they are interested, within German territory as it existed on August 1, 1914;

"(2) 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, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war.

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

“ARTICLE II

"The Government of the United States and the Government of Germany shall each appoint one commissioner. The two Governments shall by agreement select an umpire to decide upon any cases concerning which the commissioners may disagree, or upon any points of difference that may arise in the course of their proceedings. Should the umpire or any of the commissioners die or retire, or be unable for any reason to discharge his functions, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

“ARTICLE FII

"The commissioners shall meet at Washington within two months after the coming into force of the present agreement. They may fix the time and the place of their subsequent meetings according to convenience.

“ARTICLE IV

"The commissioners shall keep an accurate record of the questions and cases submitted and correct minutes of their proceedings. To this end each of the Governments may appoint a secretary, and these secretaries shall act together as joint secretaries of the commission and shall be subject to its direction.

"The commission may also appoint and employ any other necessary officer or officers to assist in the performance of its duties. The compensation to be paid to any such officer or officers shall be subject to the approval of the two Governments.

“ARTICLE V

"Each Government shall pay its own expenses, including compensation of its own commissioner, agent, or counsel. All other expenses, which by their nature are a charge on both Governments, including the honorarium of the umpire, shall be borne by the two Governments in equal moieties.

“ARTICLE VI

"The two Governments may designate agents and counsel who may present oral or written arguments to the commission.

"The commission shall receive and consider all written statements or documents which may be presented to it by or on behalf of the respective Governments in support of or in answer to any claim.

"The decisions of the commission and those of the umpire (in case there may be any) shall be accepted as final and binding upon the two Governments.

“ARTICLE VII

"The present agreement shall come into force on the date of its signature."

The note requesting the President of the United States to designate the umpire, which was addressed to Ambassador Houghton, is as follows:

"Mr. AMBASSADOR:

"The agreement concluded to-day for the settlement of the ~~two~~ ^{two} int of American claims for damages provided by article 2, that on the basis of an agreement between the two Governments concerned an umpire shall be chosen. The German Government is convinced of the intention of the American Government to carry out in an accommodating and just manner the settlement of the questions still to be solved between the two States concerned, the way to which is opened by the signature of the agreement. It is still further strengthened in this belief by the assurances received from Your Excellency. The German Govern-

ment believes that the distrust of nations toward one another brought about by the war and the severe economic damages which it caused to all countries concerned can be most certainly done away with if these countries decide to approach the solution of the questions which have arisen between them as a consequence of the war in a generous manner and in the spirit of mutual accommodation. The German Government welcomes the fact that the American Government intends to take the initiative in this connection. In order to make this possible and in order to give the American Government a proof of its confidence, the German Government has the honor to request the President of the United States to cause an American person, seeming to him suited for this responsible office, to accept the position of umpire, such as it contemplated in the above-mentioned agreement. I should be grateful to Your Excellency if you would transmit this proposal of the German Government to the President of the United States. At the same time I take advantage of this occasion to renew to you, Mr. Ambassador, the assurance of my most distinguished consideration.

"(Signed) WIRTH."

William Rufus Day, who has been selected as umpire under the claims agreement, was admitted to the bar in 1872 and began the practice of law at Canton, Ohio, the same year. He served as judge of the Court of Common Pleas (Ohio) 1886-90; was appointed United States district judge for the northern district of Ohio in 1889; served as Assistant Secretary of State from March, 1897, to April 26, 1898, and as Secretary of State from April 26, 1898, to September, 1898, when he became chairman of the United States Peace Commission at Paris at the close of the war between the United States and Spain. He was United States circuit judge for the sixth circuit, 1899-1903, and has been Associate Justice of the Supreme Court of the United States since February, 1903.

An agreement was signed at Berlin, Germany, on August 10, 1922, by a representative of the Government of the United States and a representative of the Government of Germany which provided for the establishment of a commission to determine the amounts due by the German Government on the classes of obligations described below:

(1) Claims of American citizens arising since July 31, 1914, in respect of damage to or seizure of their property, rights, and interests, including any company or association in which they are interested within German territory as it existed on August 1, 1914.

(2) 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, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war.

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

According to the provisions of the agreement, the Government of the United States and the Government of Germany were each to appoint one commissioner, and the two Governments were to agree upon an umpire to decide any case or point concerning which the commissioners might disagree. The two Governments have appointed their respective commissioners and have selected the umpire and the President has appointed an agent to represent the Government of the United States before the commission.

In a note which the American Ambassador at Berlin addressed to the German Chancellor at the time the agreement was signed, the Government of the United States undertook to notify the commission within a period of six months from the date of its first meeting of all claims to be presented to it. The first meeting was held on October 9, 1922. In order that the desired notice can be given to the commission within the required time, it is important that claims be presented to the department at as early a date as possible so that they may be examined and prepared for notification to the commission.

It appears from the records of the department that you consider that the German Government is obligated to you within one of the categories described above. Any petition which you desire to present to the department should be prepared in duplicate and should contain a full and complete statement of the facts and circumstances from which the obligation for which indemnification or reimbursement is sought arose. The petition should also set forth whether

the petitioner is now a citizen of the United States; and, if so, whether he is a native or naturalized citizen, and where he is now domiciled. The petition should be subscribed under oath and should be accompanied by the best obtainable evidence, in duplicate, in support of the allegations made in the petition. Citizenship by birth in the United States may be established by the production of duplicate certified copies of a birth certificate, or if this be not available, the affidavits, in duplicate, of persons who have known the claimant since birth and are in a position to testify as to the time and place of his birth. Citizenship by naturalization may be established by the production of an original naturalization certificate or two certified copies thereof, or of the final order of the court admitting the person to citizenship. Certified copies of certificates issued since June 29, 1906, will be forwarded to the Department of State by the Department of Labor upon the request of a claimant. In the case of corporations, two certified copies of the articles of incorporation should be furnished. The citizenship of a partnership is that of its individual members.

Mr. Robert C. Morris has been appointed agent of the United States before the Mixed Claims Commission, United States and Germany, and is preparing to present claims to the commission. It is, therefore, necessary that you present your claim to the department on or before January 1, 1923.

AMERICAN CLAIMS AGAINST TURKEY AND BULGARIA

CLAIMS AGAINST TURKEY

The United States never declared war against Turkey. There was therefore no occasion for the negotiation of a treaty establishing friendly relations such as the treaties with Germany, Austria, and Hungary. In order, however, to regularize relations between the United States and the new Turkish régime, a treaty was concluded at Lausanne on August 6, 1923, between the United States and Turkey. This treaty contained no provision for the settlement of American claims against Turkey but an exchange of letters was effected on the same day that the treaty was signed, which referred to this question. These letters, in translation, were as follows:

LAUSANNE, August 6, 1923.

EXCELLENCY: I have the honor to draw your excellency's attention to the declarations which I previously made on the subject of the importance which my Government attached to the conclusion, on the occasion of the negotiation of the treaties signed to-day, of an agreement concerning the settlement of the claims of American nationals, companies, and associations against the Turkish Government.

In proceeding to the signature of the treaties above mentioned, I must say, under instruction from my Government, that it is understood that the question of claims is reserved for subsequent discussion as soon as possible after a period of 20 days, and that in waiting for the conclusion of an agreement on this subject, my Government reserves to itself entire liberty of action concerning the question of submitting the treaties to the Senate of the United States for its advice and its consent to their ratification.

Accept, Excellency, the assurances of my highest consideration.

JOSEPH C. GREW.

His Excellency ISMET PASHA,

Minister of Foreign Affairs of the Government

of the Grand National Assembly of Turkey.

Chairman of the Turkish Delegation, Lausanne.

LAUSANNE, August 6, 1923.

EXCELLENCY: I have had the honor of receiving the letter which your excellency was so kind as to address to me to-day relative to the question of claims.

The Turkish delegation has several times had occasion to make plain the point of view of its Government on the subject of the reciprocal claims of the nationals of the two countries.

This question having been found incapable of solution, in spite of the efforts exerted on both sides, during the course of the negotiations of the treaty signed to-day at Lausanne, I agree with your excellency to reserve all discussion for a subsequent date, as soon as possible after 20 days. I wish to make clear upon this occasion that the Government of the Grand National Assembly

of Turkey similarly reserves its entire liberty of action with regard to the question of submitting the treaties above mentioned to the Grand National Assembly for ratification before the consummation of an agreement on the subject of claims.

Accept, excellency, the assurance of my high consideration.

M. ISMET.

His Excellency Mr. GREW,

*Envoy Extraordinary and Minister Plenipotentiary
of the United States, etc., Berne.*

A further exchange of letters bearing on the same subject took place in Constantinople on December 24, 1923. These letters, in translation, were as follows:

DECEMBER 24, 1923.

EXCELLENCY: Pursuant to the discussions which have been held at Constantinople since October 10, 1923, in conformity with the letters exchanged at Lausanne August 6, 1923, with a view to reserving for a subsequent discussion the question of the reciprocal claims of the nationals of the United States and of Turkey, I have the honor to inform you that I am authorized by my Government to convey to your excellency the following:

My Government is in accord with the Government of the Turkish Republic for the designation of two representatives as members of a committee which will meet at Constantinople six months after the exchange of the ratifications of the treaty signed at Lausanne, August 6, 1923, concerning the general relations between the United States and Turkey. This committee will proceed with a view to determining the solutions which should be given them, to the examination of the claims presented by either Government within a period of six months from its constitution. The dossiers of the claims must contain the documents establishing the nature, the origin, and the justification of each claim.

Documents not accompanying the claims presented within the period of six months provided for in the preceding paragraph and relating to the said claims must be communicated to the committee at the latest within a period of one year from its constitution.

I shall be grateful if your excellency will be so good as to convey to me the confirmation of this arrangement.

Accept, excellency, the renewed assurance of my very distinguished consideration.

MARK L. BRISTOL.

His Excellency Dr. ADNAN BEY, *Constantinople.*

CONSTANTINOPLE, December 24, 1923.

EXCELLENCY: I have had the honor to receive the note which your excellency was good enough to send me December 24, 1923, concerning the question of the reciprocal claims of the nationals of Turkey and of the United States, a question which was reserved for a subsequent discussion by virtue of the letters exchanged at Lausanne August 6, 1923.

I am authorized by my Government to inform your excellency that it is in accord with the Government of the United States for the designation for its part of two representatives as members of a committee which will meet at Constantinople six months after the exchange of the ratifications of the treaty signed at Lausanne August 6, 1923, concerning the general relations between Turkey and the United States. This committee will proceed with a view to determining the solutions which should be given them, to the examination of the claims presented by either Government within a period of six months from its constitution. The dossiers of the claims must contain the documents establishing the nature, the origin, and the justification of each claim.

Documents not accompanying the claims presented within the period of six months provided for in the preceding paragraph and relating to the said claims must be communicated to the committee at the latest within a period of one year from its constitution.

Accept, excellency, the renewed assurance of my very distinguished consideration.

DOCTOR ADNAN.

His Excellency Admiral MARK L. BRISTOL.

Representative of the Government of the United States of America.

Pending action by the Senate on the treaty of Lausanne with Turkey, the Department of State has taken no further steps looking to the adjustment of American claims against Turkey. An examination of the department's files discloses that it had record of about 400 formal applications for the support of claims against the Turkish Government, and that the amounts claimed therein aggregate about \$17,000,000. It appears that very few of these claims have their origin in events during the period of Turkey's belligerency in the World War.

CLAIMS AGAINST BULGARIA

The United States never declared war against Bulgaria. There was, therefore, no occasion for the negotiation of a treaty establishing friendly relations such as the treaties with Germany, Austria, and Hungary. The files of the department show that 17 claimants have indicated their desire to prefer claims against the Government of Bulgaria. The amounts claimed aggregate approximately \$1,750,000. Of these 17 cases, 8 arose during the period August 1, 1914, to July 2, 1921. The claimants in these eight cases have claimed approximately \$250,000.

MEMORANDUM REGARDING AMERICAN CLAIMS AGAINST GERMANY SUBMITTED AFTER THE EXPIRATION OF THE TIME LIMIT FIXED BY THE EXCHANGE OF NOTES OF AUGUST 10, 1922

During the early part of last year the American agent made an examination of the so-called "late claims" filed with the Department of State for the purpose of determining their probable amount and merit. The result of his examination was set forth in a letter addressed to the Department of State by him on March 4, 1926. The text of this letter and of the memorandum transmitted therewith is printed on pages 372 to 374, inclusive, of the document entitled "Return of Alien Property, No. 4," containing hearings before the Committee on Ways and Means of the House of Representatives held in November, 1926. This letter is self-explanatory, and contains all the information now available on this subject.

DEPARTMENT OF STATE,
January 11, 1927.

LIST OF CLAIMS CONVENTIONS, PROTOCOLS, OR AGREEMENTS ENTERED INTO BETWEEN THE GOVERNMENT OF THE UNITED STATES AND OTHER GOVERNMENTS, WHICH HAVE BEEN SUBMITTED TO THE SENATE FOR ADVICE AND CONSENT, AS RECORDED IN "TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS, AND AGREEMENTS BETWEEN THE UNITED STATES AND OTHER POWERS, 1776 TO 1923" AND IN THE "TREATY SERIES" OF THE UNITED STATES SUBSEQUENT TO 1923

Claims convention concluded January 27, 1849, between the United States and Brazil. (Malloy, p. 144.)

Claims convention concluded August 7, 1892, between the United States and Chile, providing for the adjustment of claims made by citizens of either country against the government of the other. (Malloy, p. 185.)

Convention concluded May 24, 1897, between the United States and Chile, reviving the convention of August 7, 1892. (Malloy, p. 190.)

Claims convention concluded November 8, 1858, between the United States and China. (Malloy, p. 232.)

Claims convention concluded September 10, 1857, between the United States and Colombia. (Malloy, p. 319.)

Claims convention concluded February 10, 1864, between the United States and Colombia, extending the duration of the commission established under the convention of September 10, 1857. (Malloy, p. 321.)

Claims convention concluded July 2, 1860, between the United States and Costa Rica. (Malloy, p. 346.)

Claims convention concluded March 28, 1830, between the United States and Denmark. (Malloy, p. 377.)

Agreement concluded December 6, 1888, between the United States and Denmark, submitting the claim of Carlos Butterfield & Co. to arbitration. (Malloy, p. 387.)

Claims convention concluded November 25, 1862, between the United States and Ecuador providing for the adjustment of claims made by citizens of either country against the Government of the other. (Malloy, p. 432.)

Claims convention concluded February 28, 1893, between the United States and Ecuador providing for the arbitration of the claim of Julio R. Santos. (Malloy, p. 438.)

Convention concluded April 30, 1803, between the United States and France for the payment of sums due by France to citizens of the United States. (Malloy, p. 513.)

Claims convention concluded January 15, 1880, between the United States and France providing for the adjustment of claims made by citizens of either country against the Government of the other. (Malloy, p. 535.)

Claims convention concluded July 19, 1882, between the United States and France, extending the term of duration of the commission provided for by the convention of January 15, 1880. (Malloy, p. 539.)

Claims convention concluded February 8, 1883, between the United States and France providing for the further extension of the duration of the commission provided for by the convention of January 15, 1880. (Malloy, p. 540.)

Claims convention concluded February 8, 1853, between the United States and Great Britain, providing for the adjustment of claims made by citizens of either country against the Government of the other. (Malloy, p. 664.)

Claims convention concluded July 17, 1854, between the United States and Great Britain, extending the duration of the commission provided for under the convention of February 8, 1853. (Malloy, p. 673.)

Treaty concluded July 1, 1863, between the United States and Great Britain, providing for the settlement of claims against the United States by the Hudson Bay Co. and the Puget Sound Agricultural Co. (Malloy, p. 688.)

Treaty concluded May 8, 1871, between the United States and Great Britain providing in part for the arbitration of the Alabama claims. (Malloy, p. 700.)

Convention concluded February 8, 1896, between the United States and Great Britain for the settlement of claims presented by Great Britain against the United States under the fur seals convention of February 19, 1892. (Malloy, p. 766.)

Claims convention concluded April 11, 1839, between the United States and Mexico. (Malloy, p. 1101.)

Convention concluded January 30, 1843, between the United States and Mexico, regulating the payments to be made by the latter under the convention of April 11, 1839. (Malloy, p. 1105.)

Claims convention concluded July 4, 1868, between the United States and Mexico, providing for the adjustment of claims made by citizens of either country against the Government of the other. (Malloy, p. 1128.)

Convention concluded April 19, 1871, between the United States and Mexico, extending the time of the commission provided for by the convention of July 4, 1868. (Malloy, p. 1133.)

Convention concluded November 27, 1872, between the United States and Mexico, extending the duration of the commission provided for by the claims convention of July 4, 1868. (Malloy, p. 1134.)

Convention concluded November 20, 1874, between the United States and Mexico, extending further the duration of the claims commission provided for by the convention of July 4, 1868. (Malloy, p. 1136.)

Convention concluded April 29, 1876, between the United States and Mexico, extending the functions of the umpire of the claims convention provided for under the convention of July 4, 1868. (Malloy, p. 1138.)

Claims convention concluded February 4, 1859, between the United States and Paraguay. (Malloy, p. 1362.)

Claims convention concluded March 17, 1841, between the United States and Peru. (Malloy, p. 1386.)

Claims convention concluded December 20, 1862, between the United States and Peru. (Malloy, p. 1406.)

Claims convention concluded January 12, 1863, between the United States and Peru providing for the adjustment of claims made by citizens of either country against the government of the other. (Malloy, p. 1408.)

Claims convention concluded December 4, 1868, between the United States and Peru providing for the adjustment of claims made by citizens of either country against the government of the other. (Malloy, p. 1411.)

Claims convention concluded February 26, 1851, between the United States and Portugal. (Malloy, p. 1458.)

Convention concluded November 7, 1899, between the United States, Germany, and Great Britain relating to the settlement of claims of citizens and subjects of the respective countries resident in the Samoan Islands on account of the recent military operations conducted there by the three governments. (Malloy, p. 1589.)

Claims convention concluded August 11, 1802, between the United States and Spain providing for the adjustment of claims of individuals of either nation. (Malloy, p. 1650.)

Claims convention concluded February 17, 1834, between the United States and Spain. (Malloy, p. 1659.)

Claims convention concluded April 11, 1838, between the United States and Texas. (Malloy, p. 1778.)

Claims convention concluded October 14, 1832, between the United States and the Kingdom of the Two Sicilies. (Malloy, p. 1804.)

Claims convention concluded January 14, 1859, between the United States and Venezuela. (Malloy, p. 1843.)

Claims convention concluded April 25, 1866, between the United States and Venezuela. (Malloy, p. 1856.)

Claims convention concluded December 5, 1885, between the United States and Venezuela reviving for a special purpose the general stipulations of the convention of April 25, 1866. (Malloy, p. 1858.)

Convention concluded March 15, 1888, between the United States and Venezuela to remove doubts as to the meaning of the convention signed December 5, 1885. (Malloy, p. 1865.)

Convention concluded October 5, 1888, extending the convention of December 5, 1885. (Malloy, p. 1866.)

Claims convention concluded January 19, 1892, between the United States and Venezuela, providing for the arbitration of the claim of the Venezuelan Steam Transportation Co. (Malloy, p. 1868.)

Special agreement concluded August 18, 1910, between the United States and Great Britain for the submission to arbitration of pecuniary claims. (Malloy, p. 2619.)

Pecuniary claims convention concluded August 11, 1910, between the United States and other powers represented at the Fourth International Congress of American States. (Malloy, p. 2922.)

Special claims convention concluded September 10, 1923, between the United States and Mexico, providing for the settlement of claims of American citizens arising from revolutionary acts in Mexico from November 20, 1910, to May 31, 1920. (Treaty Series No. 676.)

Convention concluded September 8, 1923, between the United States and Mexico, providing for the adjustment of claims by citizens of either country against the Government of the other. (Treaty Series No. 678.)

LIST OF CLAIMS CONVENTIONS CONCLUDED BY THE UNITED STATES WITHOUT THE ADVICE AND CONSENT OF THE SENATE IN ADDITION TO THOSE APPEARING ON PAGES 98 TO 100 OF THE STENOGRAPHIC TRANSCRIPT

Protocol concluded May 10, 1900, between the United States and Guatemala supplementary to the protocol of February 23, 1900. (Malloy, p. 873.)

Protocol concluded January 31, 1873, between the United States and Mexico extending the convention of April 19, 1871. (Malloy, p. 1135.)

Protocol concluded June 6, 1898, between the United States and Peru supplementary to the protocol of May 17, 1898. (Malloy, p. 1444.)

Agreement concluded February 23, 1881, between the United States and Spain for terminating the claims commission formed under the agreement of February 12, 1871. (Malloy, p. 1671.)

Protocol signed May 6 and December 14, 1882, between the United States and Spain extending the time for the termination of the claims commission under the agreement of February 12, 1871. (Malloy, p. 1673.)

Protocol concluded June 2, 1883, between the United States and Spain with reference to the termination of the American and Spanish claims commission. (Malloy, p. 1678.)

Protocol concluded December 1, 1909, between the United States and Chile providing for the arbitration of the Alsop claim. (Malloy, p. 2508.)

Agreement concluded January 28, 1911, between the United States and China providing for the settlement of Changsha indemnity claims. (Malloy, p. 2512.)

Agreement concluded August 10, 1923, between the United States and Germany providing for a mixed commission to determine the amount to be paid by Germany in satisfaction of Germany's financial obligations under the treaty of August 25, 1921. (Malloy, p. 2601.)

Agreement concluded November 26, 1924, between the United States and Austria and Hungary for the determination of the amounts to be paid by Austria and by Hungary in satisfaction of their obligations under the treaties concluded by them with the United States on August 24, 1921, and August 29, 1921, respectively. (Treaty Series No. 730.)

The CHAIRMAN. Doctor Kiesselbach, will you take the stand.

STATEMENT OF DR. J. W. KIESSELBACH, REPRESENTING THE GERMAN CLAIMANTS

The CHAIRMAN. Doctor Kiesselbach, you represent the German claimants?

Doctor KIESSELBACH. Yes.

The CHAIRMAN. By what authority do you represent them, Doctor?

Doctor KIESSELBACH. Will you allow me a few words just to explain?

The CHAIRMAN. Yes; anything that you desire to submit to the committee.

Doctor KIESSELBACH. I only want to say that I am a lawyer, practicing law in Hamburg, and that in the year 1922 I was asked to represent my Government as commissioner on the Mixed Claims Commission, and that later on I was asked, by the private owners, to represent their interests in this problem here, and that in neither of these positions have I gotten any pay whatever. I do this for the interest of my country, but I have no personal interest in it; especially, I do not get any fees either from a private German owner nor from a ship owner nor from anybody else.

In 1925, I saw these problems coming up, and I went over to Germany and I told my German compatriots about the situation, and I organized them.

The CHAIRMAN. You say you went over to Germany in 1925? You were in this country then in 1925?

Doctor KIESSELBACH. Yes; I was here since 1922.

The CHAIRMAN. And you went from here to Germany then?

Doctor KIESSELBACH. Yes; I went to Germany in the summer time, in 1925, and I organized my people who have interests in these questions, and they established a committee. This committee is composed of the leading German men in banking, in shipping, in commerce, and in industry, and the full list of them is given to the Secretary of the Treasury, Mr. Mellon, in one of my letters which are before this committee. And so I represent about 90 per cent of the German private property owners and 100 per cent of the German shipowners. And the way I negotiate with them is through this committee.

The CHAIRMAN. Do you know whether the German shipowners claim that the ships were of greater value than that which was estimated at the time they were taken over?

Doctor KIESSELBACH. I know that; yes.

The CHAIRMAN. What do they estimate those ships to be worth?

Doctor KIESSELBACH. Well, they believe that that will be between \$200,000,000 and \$300,000,000 now.

The CHAIRMAN. On what basis?

Doctor KIESSELBACH. On the basis of the value at that time. For instance, in the spring of 1917—just to show by instance, Senator, what they believed at that time—a Canadian concern was offering \$200 per ton to buy all these ships, and they refused because they were quite sure that the value of the ships was much higher, and that they would do much better by keeping them. And there are quite a number of viewpoints from which they certainly believe that the value of the ships is much higher.

I wonder if I am allowed to go further into this question?

The CHAIRMAN. Go as far as you want to, Doctor.

Doctor KIESSELBACH. For instance, just to show you, if I may touch on the Navy appraisal. This appraisal only refers to 86 ships, but there were seized here more than 100 ships. And to show and to make quite clear how these appraisals are made, the best way will be to state that, for instance, very shortly after that appraisal was made some of these ships were sunk, and insurance got for these ships lost was about six and seven times as much as the ships were appraised at. That shows that the appraisal was a very conservative one, and that the shipowners will be in the position to prove that the ships have a very, very much higher value, and that they assented and agreed to this limitation, but that without that limitation they would be entitled to a considerable amount more.

Senator McLEAN. Well, the insurance might have been larger because of the character of the insurance contract? Of course the insurance companies had to live up to their contract.

Doctor KIESSELBACH. Surely, yes.

Senator McLEAN. And it would be important to know what that contract was in the estimation of the damages.

Doctor KIESSELBACH. Yes; but my belief is that if the owner of the ship insures his ship for, let us say, \$100,000, and 14 days ago the ship has been appraised for \$10,000, it is a certain evidence that the value of the ship may be more than \$10,000.

Senator McLEAN. Yes; but these ships that were sunk were in seagoing condition, and the ships that were not sunk were so injured before they came into our possession that their value was greatly damaged.

Doctor KIESSELBACH. I do not think so, Senator. I think the injuries made to the engines were very small and very ineffective.

Senator McLEAN. Well, I do not know.

Doctor KIESSELBACH. I do not want to contradict you, but you asked me.

Senator McLEAN. I am merely seeking information.

Doctor KIESSELBACH. Yes.

The CHAIRMAN. Well, Doctor, it is generally understood, of course, that the ships at the time America seized them had been as near destroyed for use as it was possible to do without sinking them.

Doctor KIESSELBACH. From my information that is not so, Senator. But, of course, I do not know it.

Senator McLEAN. Well, if they insured these ships at so much per ton at a certain time, the insurance companies would have to live up to their contract.

Doctor KIESSELBACH. Yes.

Senator McLEAN. Whereas later on a great many things might have occurred that would have affected the tonnage value of those ships.

Doctor KISSLERBACH. Pardon me, Senator, but there may be a misunderstanding. As far as I know these ships have been insured here after their seizure by the United States; therefore it shows that the men who insured those ships believed them to be of a higher value, notwithstanding that some injury may have been done to them. I do not know that.

Senator McLEAN. Well, I do not know. I assume that the board or the authorities that appraised these ships which represented our Government must have had some particular reliable information as to the tonnage value at the time. And as I understand it they fixed that value at about \$33,000,000.

Doctor KISSLERBACH. For 86 ships; yes.

The CHAIRMAN. No, Doctor, it was 89 ships.

Doctor KISSLERBACH. Eighty-nine ships. I beg your pardon, I made a mistake.

The CHAIRMAN. Eighty-nine ships.

Doctor KISSLERBACH. Yes; 89 ships.

The CHAIRMAN. And the valuation was \$33,000,000 approximately. Over \$33,000,000.

Doctor KISSLERBACH. Yes.

The CHAIRMAN. Now as to the value, was not this the fact, that those ships were interned, and of course the value that would be put upon those ships as interned ships may be different from the value of the ships after they were released and reconditioned and put in operation?

Doctor KISSLERBACH. I agree to that. I mean it is a question of—

The CHAIRMAN. Well, they were not insured here in America while they were interned ships, but after they were released, then, of course, they were abroad, and then is the time that the insurance was placed upon them in America.

Doctor KISSLERBACH. I fully admit that. It is a question of argument, sir. I mean what may be the outcome of it I do not know, but there are a number of points which can be made by the German shipowners, we believe, to prove that the value of the ships may be higher, may be considerably higher.

The CHAIRMAN. Well, if they were worth from \$200,000,000 to \$250,000,000 they would be worth eight times the amount of the appraisal, nearly.

Doctor KISSLERBACH. But they agree to limit it to much less, you know.

The CHAIRMAN. Proceed, Doctor.

Senator McLEAN. Well, how was this compromise of \$100,000,000 brought about? As I understand it you had something to do with negotiating this.

Doctor KISSLERBACH. Yes; we discussed this question of compensation for ships, the Secretary of the Treasury, Mr. Mellon, and myself, and his position was that it would be impossible to allow any compensation without knowing how much could be at stake, and therefore it should be limited, and I admitted that would be

the only way to end this question, and then we agreed to the amount of \$100,000,000, after several discussions.

The CHAIRMAN. That is, not to exceed \$100,000,000?

Doctor KIESSELBACH. Up to.

The CHAIRMAN. Not to exceed.

Doctor KIESSELBACH. Yes; not to exceed. Including the patents and including the radio stations.

The CHAIRMAN. Have you led the owners of those ships to believe that it would be \$100,000,000?

Doctor KIESSELBACH. Well, they would not care much, if I may say so, for my judgment. They know much more about the value of the ships than I do. And they have never asked my opinion on that. They feel quite sure they can prove their claim to the full. I am not an expert, and it is not for me to indicate that.

The CHAIRMAN. No. I asked the question directly, but perhaps I should put it this way: Has there been any discussion between you and any representative of American interests, and in that discussion have you been led to believe that the amount would be \$100,000,000?

Doctor KIESSELBACH. Between the American claimants and myself, no.

The CHAIRMAN. Or any representative of the Government?

Doctor KIESSELBACH. No.

Senator JONES of New Mexico. American officials, or any one?

Doctor KIESSELBACH. No.

Senator JONES of New Mexico. Well, was there not a proposition made by Secretary Mellon or Mr. Winston which practically indicated that the amount would be \$100,000,000? And was not the estimate of the amount to be allowed for those ships placed at \$100,000,000 in fixing up the payments under the House bill?

Doctor KIESSELBACH. No. This amount was reached, arrived at, last November 25, when I had my first discussion with the Secretary of the Treasury, Mr. Mellon. At that time we came to this limitation of compensation of \$100,000,000, and from that time there has not been any discussion on that question, sir.

Senator JONES of New Mexico. Well, I notice in the tabulation of payments to be made under the House bill, as reported by the chairman of the Ways and Means Committee of the House, that there is applied to the individual national claims of the Americans \$50,000,000 on account of these ships, and that the shipowners themselves, if they got anything, would be expected to get it in addition to the \$50,000,000. If you will just observe that report, and I have no doubt you have, you will find that there is included in these payments to the American claimants \$50,000,000; first, \$25,000,000 in 1927, and then \$25,000,000 more in 1928, and thus applying \$50,000,000 of ship money to the payment of these other claims. And so if the shipowners got their 50 per cent, which they were led to believe that they would get, there would have to be an appropriation of \$50,000,000 more, would there not?

Doctor KIESSELBACH. Yes.

The CHAIRMAN. You can continue with your statement, Doctor.

Doctor KIESSELBACH. If you will ask me questions, Senator. I do not feel entitled to make a statement.

The CHAIRMAN. Oh, you may make any kind of a statement you wish. I would like to have you give to the committee your views as

to the bill, and if you have anything further to say as to the agreement that was reached between the claimants of Germany and the claimants of America, represented by yourself and Mr. Sidley, we would like to hear it.

Doctor KIesselbach. Well, I feel that this agreement is a very fair one, and I wonder whether I am allowed to give here our German point of view of the legal situation arising out of it?

The CHAIRMAN. Yes.

Doctor KIesselbach. If you will allow me so far, I do not quite agree with what Mr. Bonyngé has said here yesterday. Yesterday he dealt here with the treaty of Versailles, but after that Germany has made the treaty with the United States, the treaty of Berlin, and in that treaty it is said that the German property shall be retained in the interests of the private American claimants till Germany has made suitable provision. Now, my personal belief is that this means that even if the treaty of Versailles would provide for liquidation and right of confiscation, this clause supersedes; it means a new agreement between both countries, agreeing that the property should only be retained and that it shall be retained until we have made suitable provision. And I beg your pardon, gentlemen, but I am sincerely of the belief that Germany made suitable provisions. You know that under the Dawes plan Germany pays the utmost that it can. That is acknowledged by every country.

Germany is paying now two billion and one half beginning next year. And later on the United States went to Paris and the allied and associated powers divided what Germany has to pay between themselves, without asking Germany, and the United States was generous enough to take only $2\frac{1}{4}$ per cent. But this generosity, in our opinion, was dealing with the allied powers, and not with Germany. Germany was not a party to that agreement. If the United States would have insisted, and the United States as the most powerful nation could have insisted instead of getting $2\frac{1}{4}$ per cent, on getting 20 per cent, nobody would have disputed but that we would have made suitable provision. Therefore my position is, and that is only for my own belief here, that really we did what we could, and that it is not our fault if what is going to the United States is not more.

The CHAIRMAN. And of course you are perfectly aware that they did not want to give anything to the United States. And it took a great deal of time and a great deal of talk to get even the $2\frac{1}{4}$ per cent.

Doctor KIesselbach. I know that, but it is not our fault. It may be the fault of the Dawes plan.

Senator HARRISON. Well, that was between the allied countries too, you are speaking of?

Doctor KIesselbach. Of course we are not a party to it.

The CHAIRMAN. The two and a quarter billion that you are referring to are gold marks and not dollars?

Doctor KIesselbach. Yes. And to continue further, I am quite sure that even if Germany would have difficulties in paying, and some other solution of the problem should come up, that under all circumstances Germany will pay what it owes to the United States. It is not so very much. It is only these \$250,000,000 occupation expenses, and then it is about \$200,000,000 and something more of

Government claims and private claims here. And it is of the utmost importance for Germany to strengthen the relations, to improve the relations toward the United States; it is of so much importance that I feel quite sure that whatever happens, except if the allied powers do not allow it, Germany will pay these amounts. And that is not only my personal opinion, but I know from my discussion in the foreign office over there that it is the firm belief and the fast purpose of our Government to act in that way.

The CHAIRMAN. Do you believe that Germany will pay the 132,000,000,000 gold marks?

Doctor KIESSELBACH. The whole amount?

The CHAIRMAN. Yes.

Doctor KIESSELBACH. I do not know.

The CHAIRMAN. Well, unless she does the claims against her will never be paid in full.

Doctor KIESSELBACH. There may be a new arrangement. I do not know what will happen, you see.

The CHAIRMAN. Well, I wanted to get your view of it, whether you really thought they could be paid in full or not.

Doctor KIESSELBACH. I believe with even these 2,500,000,000 gold marks we will some time have some great difficulties, especially the transfer of it. But it may be that Germany can pay that. You know last year there was an improvement in the condition of Germany, and that Germany paid a considerable part more than she agreed to pay.

The CHAIRMAN. But what is the sentiment over there? What is the sentiment in England and France as to whether Germany will continue to pay this 2,500,000,000 marks?

Doctor KIESSELBACH. I do not know that. I am a private lawyer, and not in politics.

The CHAIRMAN. Evidently, the doctor does not want to express himself, and so I will not press it any further.

Doctor KIESSELBACH. I would not assume to say anything about that.

Senator SHORTRIDGE. Mr. Chairman, may I interrupt and ask this question right there while it is in my mind? I understood you to say, Doctor, that this property of the Germans should be held until Germany made suitable provision to compensate, or reimburse, take care of, her nationals. What law has been enacted by Germany, what done to take care of her nationals should we retain their several properties?

Doctor KIESSELBACH. May I make one remark? My friend Mr. von Lewinski, tells me that I misunderstood a question here. What I intended to say was that I believe that Germany has made suitable provisions to pay the American claims, and my friend tells me that the question asked is what suitable provision Germany has made to pay the German owners. I have not answered that question. I suppose now you asked that question, Senator?

Senator SHORTRIDGE. Yes.

Doctor KIESSELBACH. Germany has enacted a law, and under that law on the average the German owner gets 2½ per cent of the pre-war value of the property. Not of German property seized in the United States. This property is not compensated for at all, because the position of our Government is that it is not confiscated.

but only retained. But so far as property is confiscated; for instance, in England and France we got that compensation. Only in some countries was the property confiscated. Other countries like the Latin American countries have not confiscated at all, but have returned the full property after peace.

Senator JONES of New Mexico. Well, their people did not have any claims against Germany, did they?

Doctor KIESSELBACH. They did; yes.

Senator JONES of New Mexico. Did Cuba have any claims against Germany?

Doctor KIESSELBACH. I do not know, but Brazil and these South American republics had. If I may give you the names of the countries that released all the property: Bolivia, Brazil, Cuba, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Peru, and Uruguay.

Senator JONES of New Mexico. Now, did the nationals of those countries have any claims for injuries during the war?

Doctor KIESSELBACH. I feel quite sure they did.

Senator JONES of New Mexico. Well, they did not enter the war?

Doctor KIESSELBACH. Yes; they did.

Senator JONES of New Mexico. Cuba did, of course.

Doctor KIESSELBACH. All these countries did.

Senator JONES of New Mexico. And were they parties to the Versailles treaty?

Doctor KIESSELBACH. Yes. They signed it.

Senator JONES of New Mexico. Well, what has been done with respect to claims of the nationals of those countries against Germany? The claims against Germany by the nationals of those countries?

Doctor KIESSELBACH. I can not tell you, sir. I do not know that.

Senator JONES of New Mexico. Have any claims been presented by any of the nationals of those countries to any tribunals, or to the State Department of the United States, or to the State Department of Germany, or anywhere else?

Doctor KIESSELBACH. I can not answer. As I said in the beginning, I am a private lawyer, and the only point on which I have to work on these questions is the American question. I have never served in the Foreign Office. I have never been in public life. It is not that I do not want to answer. I can not answer. I do not know these facts.

Senator JONES of New Mexico. Well, the reason I am asking these questions is that my information is, and I am not assuming it to be correct, doctor—my information is that none of the nationals of those countries have any claims against Germany for injuries during the war. And that therefore they simply had German property interned in their countries during the war, but their citizens did not suffer any damages by reason of the war.

Doctor KIESSELBACH. If I may make this addition, sir. I feel quite sure, first, that there is a very close commercial relation between these countries and Germany, especially for instance. Hamburg, and, therefore, I do not doubt for a moment that very important private debts have existed between these countries and Germany, and you know these debts were also a lien on the property. Further, all these countries shipped very large cargoes during the war, and you know that very many ships were sunk, and therefore, it is my

belief—it is only my guess—that cargoes were lost and the people lost by them.

Senator JONES of New Mexico. And so far as you know, then, no provision has been made between Germany and those various countries for the settlement of any claims which the nationals of those countries may have had against Germany?

Doctor KISSLBACH. No; my belief is that the private creditors have settled directly with the private debtors in Germany, as very many countries did.

The CHAIRMAN. Just at this time, Senator, I had better put into the record the estimate of claims submitted by the allied and associated powers up to February 4, 1921, and that list, which is contained in the report of the Reparation Commission, will show the claims submitted for every country, beginning with France and including the British Empire, Italy, Belgium, Japan, Czechoslovakia, Rumania, Portugal, Greece, Brazil, Siam, Bolivia, Peru, Haiti, Cuba, Liberia, and Poland.

Senator McLEAN. Who prepared this?

The CHAIRMAN. The Reparation Commission prepared this list.

Senator McLEAN. And does it include the claims of the nationals in South America, do you know?

The CHAIRMAN. I think I mentioned Brazil, Bolivia, Peru, Haiti, and Cuba.

Senator McLEAN. Do they amount to anything?

The CHAIRMAN. Oh, yes. Brazil's amounts to 1,990,192 pounds sterling.

Senator SHORTRIDGE. Is that a claim of the Government or the nationals of Brazil?

The CHAIRMAN. The nationals and the Government, but the Government put in the claim. Siam has 9,203,966 gold marks. Bolivia has 16,000 pounds sterling. Peru has 56,236 pounds sterling. Cuba has \$801,135. And Haiti has \$80,000.

(The list presented by the chairman for the record, containing the original estimates of claims submitted by the allied and associated powers up to February 4, 1921, is here printed in the record, as follows:)

	France	British £
DAMAGE TO PROPERTY		
A. Industrial damage.....		
B. Damage to property built upon.....	38,882,521,479 French francs.	
C. Damage to furniture.....	36,892,600,000 French francs.	
D. Damage to property not built upon.....	25,119,500,000 French francs.	
E. Damage to State property.....	21,671,546,225 French francs.	7,936,156 pounds £
F. Damage to public works.....	1,958,217,193 French francs.	
G. Other damage.....	2,583,209,425 French francs.	
Shipping losses.....	2,359,865,000 French francs.	
	5,009,618,722 French francs.	763,000,000 pounds £
Inland navigation.....		4,600,000 pounds £
Special:		
Algeria and colonies.....	10,710,000 French francs.	
Abroad.....	2,094,825,000 French francs.	24,310,559 pounds £
5 per cent interest on the principal (33 milliards in round figures from Nov. 11, 1918, to May 1, 1921, that is, 30 months in round figures).	4,125,060,000 French francs.	
DAMAGE TO PERSONS		
A. Military pensions and compensation of the same nature (par. 5, annex 1).....	60,045,096,000 French francs.	1,700,800,000 pounds
B. Allowances to families of mobilized persons (par. 7, annex 1).....	12,930,956,824 French francs.	7,597,832,080 francs
Civilians (pars. 1, 2, 3, 4, 6, 8, 10, annex 1):		
(a) Pensions granted to civilian victims of the war and their dependents (par. 1).....	514,465,000 French francs.	
(b) Maltreatment of civilians and prisoners of war (pars. 2, 3, and 4).....	1,869,230,000 French francs.	36,030,360 francs
(c) Assistance to prisoners of war and their families (par. 6).....	976,906,000 French francs.	
(d) Insufficiency of wages (par. 8).....	223,123,313 French francs.	
(e) Exactions imposed by Germany upon the civilian population (par. 10).....	1,267,615,939 French francs.	
Grand total.....	218,541,596,120 French francs.	2,542,707,375 pounds £ 7,597,832,080 francs

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Estimate of claims submitted by the allied and associa

	British Empire	Italy	Belgium	Japan	Serb-Croat-Slovene State	Rumania	Portugal	Greece
frances.								
frances.		Replacement value						
frances.		1,541,185,000 lire						
frances.		6,810,720,000 lire	8,316,086,125 Belgian francs					
frances.		5,101,185,000 lire						
frances.	7,036,456 pounds sterling	5,905,833,500 lire	21,357,252,074 Belgian francs	850,000 yen				
frances.								
frances.		1,484,615,000 lire						
frances.	763,000,000 pounds sterling	128,000,000 pounds sterling (approximate)	181,708,250 Belgian francs	297,593,000 yen				
frances.	4,600,000 pounds sterling				112,500,000 dinars		32,307 gold contos	623,075,000 gold francs
frances.	24,940,559 pounds sterling							5,782,000 gold francs
frances.								
frances.	1,706,800,000 pounds sterling	31,041,000,000 francs	1,637,285,612 French francs	70,294,000 yen	13,211,251,715 francs	9,206,603,076 gold francs	12,100 gold contos	697,741,434 gold francs
frances.	7,597,832,086 francs	6,885,130,395 francs	730,930,484 French francs	454,063,000 yen	873,688,620 francs	416,703,847 gold francs	1,436 gold contos	497,007,763 gold francs
frances.								
frances.	36,030,360 francs	12,153,289,000 lire	490,131,000 Belgian francs	9,974,000 yen	3,721,514,002 francs	944,850,000 francs		
frances.			350,332,652 Belgian francs			268,394,785 francs		
frances.			144,000,000 Belgian francs			200,000,000 francs		
frances.			3,305,534,802 Belgian francs			875,000,000 dinars		
frances.	2,542,707,375 pounds sterling; 7,597,832,086 francs.	33,080,836,000 lire; 37,926,130,395 francs; 128,000,000 pounds.	34,154,645,803 Belgian francs; 2,375,215,936 French francs	832,774,000 yen	8,496,001,000 dinars; 10,219,700,112 francs	31,000,400,188 gold francs	1,944,261 gold contos	4,902,789,739 gold francs

REMARKS

Italy: (1) Italy has excluded from her valuation, damages relating to her newly-redeemed provinces. (2) Paragraphs A, B, C, D, E, F under damage to property compared with those of France should be considered as a whole and not separately, especially in regard to industrial damage and damage to public works; France has included her railways under industrial damage, and Italy under damage to public works. (3) The figure given for damage to civilians is subject to agreement in regard to general principles.

Japan: 1 gold mark = 0.478 yen.

Brazil: (1) £303,018 are included under shipping losses for insurance of vessels and cargoes; (2) £1,071,839 for loss of profit through dispossession, and £454 for confiscation at Berlin of goods belonging to a Brazilian citizen are included under damage to property.

Siam: The Siamese debt. Serb-Croat-Czechoslovak the war.

Liberia: 1,32 property.

3 allied and associated powers up to February 12, 1921

Greece	Brazil	Czechoslovakia	Siam	Bolivia	Peru	Haiti	Cuba
1,883,182,542 gold francs	1,072,203 pounds sterling. 598,406 francs.....	By the war: 6,904,228,096 francs; 5,614,047,090 Czechoslovakian crowns. By Bolshevik invasion: 618,204,007 francs; 1,448,169,845 Czechoslovakian crowns.	1914 value 8,061,453 gold marks.....	12,000 pounds sterling.....	1914 value 150,000 francs.....	152,593 francs.....	285,135 dollars.....
623,075,000 gold francs	400,974 pounds sterling.....				56,236 pounds sterling.....		
5,762,000 gold francs							
697,741,434 gold francs	16,000 pounds sterling.....		124,018 gold marks.....	4,000 pounds sterling.....		180,000 francs; 20,000 dollars.....	516,000 dollars.....
497,007,763 gold francs			935,857 gold marks.....				
1,280,000,000 gold francs			82,638 gold marks.....			200,000 francs; 60,000 dollars.....	
925 pounds sterling.....							
4,902,788,739 gold francs	598,406 francs; 1,090,192 pounds sterling.	7,612,432,103 francs; 7,063,117,835 crowns.	9,203,906 gold marks.....	16,000 pounds sterling.....	56,236 pounds sterling; 150,000 francs.....	80,000 dollars; 532,503 francs.....	801,135 dollars.....

REMARKS

vinces. Siam: The claims do not include 924,948 gold marks, also claimed by Siam, representing the cost of the
ould be Siamese detachment of occupation, which consequently raises the grand total to 10,128,914 gold marks.

public Serb-Croat-Slovene State: 1 dinar=1 gold franc.

c works. Czechoslovakia: Estimate in taking February 8, 1914, as the date upon which Czechoslovakia entered
the war.

Brazilian Liberia: 1,326,635 dollars claimed by Liberia for loss of customs duties are included under damage to
1,071,839 property.

Cuba	Liberia	Poland	European Danube Commission
36,135 dollars.....	1,345,435 dollars.....	{12,094,438,780 gold francs; 500,000,000 gold marks.	1,834,800 gold francs.
	116,000 dollars.....		
16,000 dollars.....	115,000 dollars.....		
		9,818,830,960 gold francs.....	488,851 lei; 15,048 French francs.
	2,400,707 dollars.....		
30,135 dollars.....	3,977,142 dollars.....	21,913,269,740 gold francs; 500,000,000 gold marks.	1,834,800 gold francs; 15,048 French francs; 488,851 lei.

Senator JONES of New Mexico. Well, now, who can tell us what arrangement has been made, if any, for the payment of those claims?

The CHAIRMAN. Well, I do not know whether the doctor knows.

Doctor KIESSELBACH. I can only remark this, Senator: You see, the greatest parts of the claims are reparation claims, and the reparation claims are to be paid under the Dawes plan, and the greatest part of what this Mixed Claims Commission here has allowed are reparation claims, too.

Senator MCLEAN. Well, do these include reparation claims and economic claims?

The CHAIRMAN. All sorts of claims.

Doctor KIESSELBACH. If you will allow me one explanation. All countries except the United States have simply presented total amounts representing their reparation claims to be fixed by the Reparation Commission. The United States has followed its tradition of arbitration, and has prepared every single claim as far as it falls under the reparation clauses, and these claims were submitted to the Mixed Claims Commission and are adjudicated there, together with the claims arising from the economic clauses. There you see the difference. Other countries have submitted to the tribunals set up under the treaties only the claims arising under such economic clauses. All other claims are not private debts, but reparations in the language of the treaty and are to be paid under the Dawes plan. I may add that the very greatest part of what we have allowed here falls under the term of reparation claims.

Senator JONES of New Mexico. Well, now, I think we ought to put in at this point the allocation of the funds under the Dawes plan which was entered into under the Paris agreement, so that we may know.

The CHAIRMAN. That is, the percentages?

Senator JONES of New Mexico. The percentages.

The CHAIRMAN. Beginning with France at 52 per cent, and running down to the United States of 2 1/4 per cent.

Senator JONES of New Mexico. Running down to that, including all these countries.

The CHAIRMAN. Mr. Phenix will prepare it in one statement, and it will be put in the record at this point.

(The statement of the allocation of funds under the Dawes plan is here printed in the record in full, as follows:

TABLES REPRODUCED FROM THE REPORT OF THE GERMAN GENERAL COMMISSION FOR REPARATION PAYMENTS, DATED NOVEMBER 3, 1926

EXHIBIT I.—*Composition of the German annuity under the experts' plan¹*
[In millions of gold marks]

		1928-29 and thereafter "standard year"	
		1927-28	Budget 1,250
		1926-27	1926-27
1924-25	1925-26	2	2
German external loan 1924 800	Budget 250	Supplementary budget contribution 300	Budget 500
Interest on the German Railway bonds 200	Transport tax 250	Budget 110	Transport tax 290
	Interest on the German Industrial debentures 125	Transport tax 290	Interest and amortization on the German Industrial debentures 300
	Interest on the German Railway bonds 595	Interest on the German Industrial debentures 250	Interest and amortization on the German Railway bonds 660
1,000	1,220	1,500	1,750
			2,500 ³

¹ The annuity year runs from Sept. 1 to Aug. 31.
² The plan fixed the third annuity at 1,200,000,000 gold marks. It provided, however, for two contingent supplementary contributions, payable from the German budget in the fourth and fifth annuity years, amounting in the aggregate to 500,000,000 gold marks. By an agreement between the Reparation Commission and the German Government, executed Sept. 8, 1926, the two contingent supplementary contributions have been replaced by a single definite payment of 300,000,000 gold marks, to be made during the third annuity year.
³ Subject to increase as from 1929-30 onward, depending on the index of prosperity described in the plan.

EXHIBIT II.—*Final distribution of first annuity, showing shares of the respective powers*

[In thousands of gold marks]

	Army costs		Belgian war debt	Restitu- tion	American mixed claims	Repara- tion	Total share
	Arrears	Current					
1. France.....	6,412	110,000	16,663	4,454	.....	316,983	1,454,512
2. British Empire.....	4,838	25,000	14,309	100	.....	146,800	191,047
3. Italy.....				86	.....	60,728	66,814
4. Belgium.....		25,000	5,338	2,227	.....	83,382	2,115,947
5. Serb-Croat-Slovene State.....				72	.....	33,363	33,135
6. United States of America.....					15,359	.....	15,359
7. Rumania.....					184	7,340	7,634
8. Japan.....						5,005	5,005
9. Portugal.....						5,005	5,005
10. Greece.....						2,069	2,069
11. Poland.....					120	.....	129
Total.....	11,250	160,000	36,310	7,262	15,359	607,275	807,456
Interest received and gain in exchange (less discount paid) included in the above distribution.....							255
Service of German external loan.....							807,201
Costs of interallied commissions.....							76,970
							25,520
Total of first annuity.....							1,000,000

¹ Subject only to a possible minor modification in the distribution of the amount allocated to restitution.² These figures give effect to an agreement between the Belgian and French Governments whereby a portion of the total share accruing to the latter, and amounting to 30,000,000 gold marks, has been made available to the former.EXHIBIT III.—*Revised distribution of second annuity, showing shares of the respective powers*

[In thousands of gold marks]

	Army costs		Belgian war debt	Restitu- tion	American mixed claims	Repara- tion	Total share
	Arrears	Current					
1. France.....	10,628	110,000	21,238	5,677	.....	436,241	1,583,784
2. British Empire.....	8,018	25,000	18,237	128	.....	187,102	238,385
3. Italy.....				110	.....	85,046	85,156
4. Belgium.....		25,000	6,804	2,828	.....	74,037	1,108,679
5. Serb-Croat-Slovene State.....				91	.....	42,523	42,614
6. United States of America.....					19,576	.....	19,576
7. Rumania.....					247	9,355	9,602
8. Japan.....						6,378	6,378
9. Portugal.....						6,378	6,378
10. Greece.....						3,402	3,402
11. Poland.....				165	.....		165
Total.....	18,646	160,000	46,270	9,250	19,576	850,462	1,104,219
Interest earned and gain in exchange included in the above distribution.....							3,175
Service of German external loan.....							1,101,062
Costs of interallied commissions.....							82,234
Discount on railway interest.....							19,294
							7,410
Total of second annuity.....							1,220,000

¹ These figures give effect to an agreement between the Belgian and French Governments whereby a portion of the total share accruing to the latter, and amounting to 6,000,000 gold marks, has been made available to the former.

EXHIBIT IV.—*Approximate distribution of third annuity, showing shares of the respective powers*

[In thousands of gold marks]

	Army costs	Belgian war debt	Restitution	American mixed claims	Reparation	Total share
	Arrears	Current				
1. France	14,250	110,000	26,242	7,015	583,913	741,420
2. British Empire	10,750	25,000	22,534	158	245,072	304,814
3. Italy				136	1,94,564	94,700
4. Belgium		25,000	8,407	3,507	1,47,289	84,203
5. Serb-Croat-Slovene State				113	1,47,278	47,391
6. United States of America	55,600				24,189	70,189
7. Rumania				305		11,607
8. Japan						8,039
9. Portugal						7,992
10. Greece						4,208
11. Poland				203		203
Total	80,000	160,000	57,183	11,437	24,189	1,383,071
Service of German external loan						91,500
Costs of interallied commissions						18,350
Discount on railway interest						6,479
Total of third annuity						1,500,000

¹ In accordance with article 20 of the finance ministers' agreement of Jan. 14, 1925, a deduction of 10 per cent has been made from the total shares of Italy and Serbia. The sums thus rendered available have been distributed among the powers in arrears on the basis of the provisional percentages notified by the Reparation Commission.

² In accordance with articles B and C of the finance ministers' agreement of Jan. 14, 1925, the reparation share of Belgium has been reduced by 3.5 per cent and the amount thus released has been allocated to France and the British Empire in the proportion of 52:22.

The CHAIRMAN. Now, Senator Shortridge, in answer to your question I want to state that in 1924 Germany paid 320,710,000 gold marks for confiscation damages and other war losses.

Senator SHORTRIDGE. Paid to whom?

The CHAIRMAN. To their nationals. That was your question; to the German nationals.

Senator SHORTRIDGE. Precisely.

The CHAIRMAN. That is what I thought you asked.

Senator SHORTRIDGE. I did.

The CHAIRMAN. Yes. The amount paid for confiscation damages, 17,400,000 gold marks. Shall I give for the record the dollars or the marks? They are both given here.

Senator SHORTRIDGE. Well, if it was the normal value of the mark.

The CHAIRMAN. Gold marks. Amount paid for other war damages for that year, 1924, is 82,100,000 gold marks.

In 1925, the amount paid for confiscation damages and other war losses was 73,000,000 gold marks. Amount paid for confiscation damages, 89,700,000 gold marks. Amount paid for other war damages, 196,500,000 gold marks.

In 1926 the amount appropriated for confiscation damages and other war losses was 50,000,000 gold marks. Amount paid for confiscation damages, 4,400,000 gold marks. And for other war damages nothing was paid in 1926, or the reports so show.

Senator SHORTRIDGE. Well now, were those several amounts paid to the German nationals?

The CHAIRMAN. To the German nationals.

Senator SHORTRIDGE. On account of damages suffered by them through acts of the United States?

The CHAIRMAN. Oh, no. Through loss in the war. That was confiscation, too.

Senator SHORTRIDGE. That was on account of losses suffered by them through the war, by whomsoever those losses were caused?

The CHAIRMAN. And in whatever way. They are separated here.

Senator JONES of New Mexico. But, may I add, chiefly, if not entirely, because of property of German nationals taken over by England, France, Belgium, and other countries who were engaged in the war against Germany, and parties to the Versailles treaty.

Doctor KISSLBACH. These sums, as far as I know, include also the compensation for the 100,000 people who were expelled, for instance, from Alsace Lorraine and from Poland and so on, and had to come back to Germany without any means of subsistence, and therefore, it is not only compensation for confiscation of property, but these sums include much more. As far as I remember, the State Department has asked for information on this point, and our embassy has given full information on it, and there is a German note, which is printed somewhere.

The CHAIRMAN. This is the note. I quoted from the note.

Doctor KISSLBACH. Yes. There is the remark that as to the compensation for property confiscation, as far as payment has been made, it amounts to 2½ per cent on the average. And American property has not been compensated at all. The property of Germans in America has not been compensated at all.

Senator JONES of New Mexico. Well, may I ask why it was that Germany only paid her nationals 2½ per cent of the actual value?

Doctor KISSLBACH. Because the allied powers insisted on getting first their payment, and Germany went bankrupt, you know, and was not in a position to pay to the German owners in full.

Senator MCLEAN. Well, is this 2½ per cent payment on account?

Doctor KISSLBACH. No; it is a final payment.

Senator MCLEAN. But they took receipts in full?

Doctor KISSLBACH. Yes; it is a final payment. Under the law there is no right left for any more payment.

Senator JONES of New Mexico. May I ask whether or not, in arriving at that 2½ per cent, Germany took into consideration the fact that owing to the depreciation in gold value of the German mark that other nationals of Germany lost practically all of their property which was in the shape of debts or bonds or credits or anything of that sort? They practically lost it all, those people who were in Germany and had such property. Now, may I ask whether that fact was taken into consideration in settling with these German nationals to whom you have referred on the basis of 2½ per cent?

Doctor KISSLBACH. I can not answer that question. I was not in Germany at that time. I have not followed the parliamentary negotiations, and I have not studied the law so far.

The CHAIRMAN. Well, do I understand that German nationals are only paid 2½ per cent of their claims?

Doctor KISSLBACH. I know only what I can speak of for myself. I owned property which was seized and confiscated in England, and I got 2½ per cent compensation for that property which was confiscated.

The CHAIRMAN. Well, I notice Germany has paid to her nationals already nearly \$124,000,000. Do you mean to say that that is only 2½ per cent of the claims?

Doctor KIESSELBACH. For the average of the claims it is, because as I said before, this does not include only compensation for confiscation, but as far as I know very large amounts are paid for some other reasons. For instance, the people who lost everything by being expelled, expatriated.

Senator JONES of New Mexico. Expelled from Poland, etc.

The CHAIRMAN. Yes; I understand.

Senator McLEAN. At the time this settlement was made what was the exchange value of the mark?

Doctor KIESSELBACH. Pardon me?

Senator McLEAN. At the time this settlement of 2½ per cent was made what was the exchange value of the mark?

Doctor KIESSELBACH. I can not tell you.

Senator McLEAN. Well, was the settlement based upon that?

Doctor KIESSELBACH. It was based on the pre-war value. This property confiscated in foreign countries retained its value.

Senator McLEAN. Well, if the value of the paper currency in Germany at that time was only 2½ per cent of the gold value of the mark, why, they might have settled on that basis as they settled with everybody. They might have paid them their full debt in paper marks and still it might have been worth only 2½ per cent estimated in gold.

Doctor KIESSELBACH. Will you allow me a remark?

Senator McLEAN. Yes.

Doctor KIESSELBACH. You see this property was not property in German marks, but it was property in good English pounds, or others.

Senator McLEAN. Yes; on that basis.

Doctor KIESSELBACH. And therefore they compensated on the pre-war value, and the property owned by the Germans in these countries was more than 11,000,000,000 gold marks. It was a tremendous amount, and even 2½ per cent of it is quite an amount.

The CHAIRMAN. Well, they have paid about 8 per cent of that amount.

Senator McLEAN. Well, they might have paid their domestic obligations in full in marks when those marks were worth only 2½ per cent in gold, and liquidate those debts.

Senator JONES of New Mexico. Well, we can ascertain the facts. Those amounts were paid in 1925.

The CHAIRMAN. 1924, 1925, and 1926.

Senator JONES of New Mexico. 1924, 1925, and 1926 when the German mark was practically worthless.

The CHAIRMAN. Doctor, you made a statement that you thought that there was a final settlement on those claims. I think you are mistaken. I think they are under arbitration at this time.

Doctor KIESSELBACH. May I answer that? If I get as a German my compensation I make a final settlement. Now, the Germans tried to get our Government allowed to pay under the Dawes installments, and, of course, if they would have succeeded in that they would have a right to and would get a new right to further compensation. But if they did not succeed in that they have no right

against the German Government to get anything more than what they have already received.

The CHAIRMAN. Well, I know that the question is in arbitration at the present time. I did not know what the result was going to be.

Doctor KIESSELBACH. Yes.

Senator JONES of New Mexico. Now, Doctor, may I ask: If all of the Germans who had property in Great Britain and France and Belgium and Italy and some other countries only received 2½ per cent of the value of their properties why should the German owners of property which happened to be in America receive any more favored treatment than you have extended to your nationals with respect to property in other countries?

Doctor KIESSELBACH. Because we believe, Senator, that we have more rights here under the treaty of Berlin. All these problems, if I may say so, were settled under the conditions of the treaty of Versailles. But the United States entered into another treaty, did not accept the treaty of Versailles, but made a treaty with Germany, with a promise to retain the property until suitable provision was made, and therefore we believe we are entitled to get our property back.

Senator JONES of New Mexico. Well, if that treaty of Berlin is to receive the construction which you put upon it what was the purpose of putting into the Berlin treaty any reference to the Versailles treaty?

Doctor KIESSELBACH. Because there are quite a number of other rights which the United States Government reserves to itself, but it did it by plainly stating that the use of these rights should not be inconsistent with the rights allowed under the treaty to the Germans.

Senator JONES of New Mexico. Where was that statement made?

Doctor KIESSELBACH. It is in the treaty, if you would allow me. I wonder whether I am allowed to go into this question further? I can give you further explanation, if you want it, sir.

Senator JONES of New Mexico. Yes; any explanation.

The CHAIRMAN. Give any explanation, Doctor, you desire to make.

Doctor KIESSELBACH. I will just read this from Article II:

The United States in availing itself of the rights and advantages stipulated in the provisions of that treaty mentioned in this paragraph will do so in a manner consistent with the rights accorded to Germany under such provisions.

Senator JONES of New Mexico. Well, "under such provisions." Did that not refer to the provisions in the Versailles treaty? That is the way I interpreted that language.

Doctor KIESSELBACH. Yes: to the provisions in the Versailles treaty.

The CHAIRMAN. This is the Versailles treaty? It is not in the Berlin treaty?

Doctor KIESSELBACH. This is the Berlin treaty.

The CHAIRMAN. No; as I understand this is the Versailles treaty.

Doctor KIESSELBACH. This which I was reading was the Berlin treaty, Senator.

The CHAIRMAN. Article II says:

With a view to defining more particularly the obligations of Germany under the foregoing article with respect to certain provisions in the treaty of Versailles—

Doctor KIESSELBACH. Yes.

The CHAIRMAN (continuing reading) :

It is understood and agreed between the high contracting parties—

(1) That the rights and advantages stipulated in that treaty for the benefit of the United States, which it is intended the United States shall have and enjoy, are those defined in section 1, of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV.

The United States in availing itself of the rights and advantages stipulated in the provisions of that treaty mentioned in this paragraph will do so in a manner consistent with the rights accorded to Germany under such provisions.

Senator JONES of New Mexico. That says "under such provisions." The provisions of the Versailles treaty.

The CHAIRMAN. Yes.

Doctor KIESSELBACH. Yes; that is what it says.

Senator JONES of New Mexico. Now there is no provision in the Versailles treaty which says that the United States may not liquidate this property and pay American claims, is there?

Doctor KIESSELBACH. I believe there is, if I may explain that to a certain extent. Under the treaty of Versailles there are three groups which have a lien on our property: The private debts, damages occasioned by exceptional war measures within German territory, and what we call the neutrality claims. Mr. Bonyngre referred to that yesterday.

The CHAIRMAN. Yes; Mr. Bonyngre referred to all three.

Doctor KIESSELBACH. These three groups have a lien under that treaty, and these three groups amount, as far as the commission has passed on them, not to more than \$50,000,000. Germany has a right, if there is a surplus above that which is used for the payment of these three groups, to have that, if the power does not agree to return it, turned over to the common pot, if I may so say, of the allied powers—the question was mentioned yesterday—and Germany has an interest in this provision, it has a right in the observance of this provision, because it is, of course, to Germany's greatest interest that in the first place their neighbors, France and England, are satisfied, and everything which goes into this pot goes in the largest part to France and, to a very considerable amount, to England, and so on. Therefore, under the treaty of Versailles, Germany has the right that only for the three groups German property can be applied to pay claims of the respective Governments, and that the other remaining surplus has to go either back to her nationals, or to go to this pot. And we believe that so far as the treaty of Berlin did not change the situation—and I will come to that immediately—we have a right that these provisions should be observed.

The treaty of Berlin has changed this situation in so far as it added the proviso that the German property shall be retained as security for all claims on behalf of American private nationals for damage caused by acts of Germany, giving thereby to those nationals a lien on the property also for claims arising under the reparation clauses. But the treaty of Berlin itself does not give a right to liquidate the property to that extent, the right of liquidation being only provided for in the treaty of Versailles with the limitation mentioned before, that is the limitation to the three groups of claims; debts, exceptional war measures within German territory and neutrality claims. I may reiterate that the treaty of Berlin provides only and exclusively that the property shall be retained in favor of

those groups which, under the treaty of Versailles, would be entitled to liquidation and, in addition thereto, in favor of the private claimants who have claims under the reparation clauses. And, therefore, we have to accept the retention of our property as security for those private claims also, which form, as I said, the largest part of what our commission has allowed.

Senator MCLEAN. We get $2\frac{1}{4}$ per cent, and no more.

The CHAIRMAN. I think that is what the agreement says.

Senator JONES of New Mexico. I think what the doctor has just said is very important. And I am not prepared to answer your position, Doctor, at this time, because I have not studied these treaties with the care that you have, and have not reached any conclusion upon the points which you have mentioned. But I would like the representative of the State Department to prepare an answer to the position which the doctor has just taken, if it has any answer to it, so that we may put it in the record.

The CHAIRMAN. I think it must be admitted that the statement was correct. I said so yesterday, and I think it is.

Senator JONES of New Mexico. I would like to have now a statement from the State Department upon the very questions which the doctor has mentioned here, and if the State Department agrees to his construction of the treaties, I think it is important that we put it in this record.

Senator MCLEAN. It is very important, I agree.

Mr. PUENIX. May I say something right here?

Senator JONES of New Mexico. Yes.

Mr. PUENIX. I think you will find the answer of the State Department in the Secretary's note to the German Embassy, and the Secretary's position has not changed since that. That note stated that the Government of the United States had under these relative provisions of the treaty the absolute right to retain and liquidate the property held by this Government in satisfaction of the awards of the Mixed Claims Commission, United States and Germany, and the awards of the Tripartite Claims Commission, United States, Austria, and Hungary, making no distinction whatsoever between private claims.

The CHAIRMAN. I did not understand the doctor to say otherwise.

Senator JONES of New Mexico. Oh, yes; indeed so.

The CHAIRMAN. Then I misunderstood him.

Doctor KIESSELBACH. I fully realize that the State Department is of a different view, and therefore I beg you to appreciate that this was my personal opinion only.

The CHAIRMAN. I thought it had reference to the $2\frac{1}{2}$ per cent.

Senator JONES of New Mexico. No.

Doctor KIESSELBACH. If you will allow me to I will give you a memorandum of this question later on.

Senator JONES of New Mexico. Well, now, Doctor, we will be very glad to get any memorandum which you may furnish this committee on this point.

Doctor KIESSELBACH. Thank you, sir.

Senator JONES of New Mexico. But what the committee wants, Doctor, is the exact facts so far as we can arrive at them. And we do not want to do anything in the absence of clear knowledge with respect to these various questions.

The CHAIRMAN. We request now that our State Department give us the opinion of that department on the statement that Doctor Kies selbach has just made.

Mr. PHENIX. You have already got that.

Senator JONES of New Mexico. I think there should be an analysis of these treaties and of the Mixed Claims Commission agreement specifically covering the point which the doctor has just presented to us.

Senator McLEAN. I think it is pretty well covered in the information already furnished.

Senator EDGE. I think Secretary Kellogg has given that, but I will say that I agree with the Senator From New Mexico and I would like to see that following the doctor's statement.

Senator McLEAN. Based somewhat on the theory that some other nations under the Versailles treaty had confiscated and liquidated the German property and used it as they saw fit. Is that not so?

Doctor KIESSELBACH. Yes.

The CHAIRMAN. I still think that for the record the State Department should make the statement requested, although of course it will be just exactly the position they took before. But I want it to go into the record.

Senator JONES of New Mexico. I do not think the State Department went into an analysis of the point of the treaty such as the doctor has just referred to, but I may be mistaken about that. What I would like to have in the record is a comment upon the provisions of the various treaties to which the doctor has referred.

Senator SHORTRIDGE. Right in that connection, Mr. Chairman, our Supreme Court has held that we had certain rights under generally accepted international law. I would like to know whether we have entered into any treaty which modifies the general international law principles. If so, we of course should be and are bound by such treaty agreements. I do not know whether the pertinent part of it has been carried into this record or whether it is desirable to carry it in. I assume that the members are familiar with the statement.

Doctor KIESSELBACH. If I may make answer to that, from my point of view, I assume that the Senator refers to the Chemical Foundation decision?

Senator SHORTRIDGE. I do.

Doctor KIESSELBACH. And I may call your attention to the fact that the treaty of Berlin came into force years after the sale of the patents with which the decision deals. The Supreme Court has nothing whatever to do with the financial or legal bearing of that Berlin treaty, but deals only with the question what the United States was entitled to do during the war.

Senator SHORTRIDGE. Under accepted international law principles.

Doctor KIESSELBACH. Under domestic law. It is a question of domestic law. The trading with the enemy act is a domestic law, not an international law, a domestic law of the United States, which of course, is in force. But later in 1921 this treaty of Berlin came into force, and there was no reason for the Supreme Court to deal with that because all acts happened in the time before that.

Senator SHORTRIDGE. Prior. Certainly, that is what I had in mind. The question, therefore, that was in my mind, or the thought in

my mind was: Had we entered into any treaties subsequent to the act complained of in the case mentioned, modifying or changing the rights of the parties involved?

Doctor KISSLBACH. Yes; I believe so.

The CHAIRMAN. Senator Jones, in this connection, there has been certain correspondence with the German Government. A complete statement was made by Secretary Kellogg on May 4, 1926, answering every point that the doctor has just brought out.

Senator JONES of New Mexico. Well, that has all been put into the record heretofore.

The CHAIRMAN. Well, no.

Senator EDGE. You are referring to Document 173, are you not, Mr. Chairman?

The CHAIRMAN. I am referring to Document 173, on page 36.

Senator JONES of New Mexico. Now, I asked that all that be put into the record, and I am sure that it has been done.

The CHAIRMAN. This is the correspondence between the State Department and the German Government. This has been threshed out, you know, on exactly the same points, exactly the same statements and the same position taken as was taken by the doctor here. It seems to me that it would be better to have the position on the part of the German Government. It could not be made better than it is made in this document. It is in this Document 173, and it seems to me we ought to take cognizance of the fact that the two Governments themselves have discussed this, and take that discussion rather than his statement; rather than ask the State Department to get into controversy with some individual.

Senator JONES of New Mexico. I think you are right, and we have already put that in the record.

The CHAIRMAN. It is already in the record. If there is any doubt about it being in the record I will ask the representative of the State Department to look into that, and if it is not in the record, to see that it goes into the record.

Senator JONES of New Mexico. That is right. I know that I have heretofore asked that it be put in the record.

The CHAIRMAN. Yes. Now, Doctor, have you anything further?

Doctor KISSLBACH. I plainly feel that it is not for me to make argument with the Department of State, but I only want to say that our Government has abandoned the plan to answer the note of the Department of State, and therefore as far as I remember these notes our viewpoints are not contained in the German notes.

The CHAIRMAN. Well, they must have been given.

Doctor KISSLBACH. No; the answer of our Government says that we abstained from answering it regarding the legal points, and that we would be very glad if some solution would be found to settle this problem.

Senator JONES of New Mexico. The doctor is quite right about that. The German Government wrote a note to the State Department of our Government, and there was a reply to that. There has been no reply by the German Government to the note of the American secretary.

The CHAIRMAN. Yes; there is a reply, Senator.

Senator JONES of New Mexico. Oh, no; except a short statement there that inasmuch as the Congress was dealing with the matter

the German Government hoped that the Congress would deal with it according to the views of the German Government or adjust the matter to the satisfaction of Germany.

The CHAIRMAN. Yes; but the whole case is here.

Senator EDGE. That is under date of December 9, 1926.

The CHAIRMAN. Yes; signed by the German ambassador.

Senator SHORTRIDGE. Is this the upshot of the matter, that our Government, through proper channels, gave its interpretation of the treaty?

The CHAIRMAN. Yes.

Senator SHORTRIDGE. The German Government did likewise give its interpretation of the situation?

The CHAIRMAN. Yes. Our Government gave an answer to that.

Senator JONES of New Mexico. The matter started by the claim made by Germany that the provision for the $2\frac{1}{4}$ per cent under the Versailles treaty was the suitable provision referred to in the Knox-Porter resolution.

Senator SHORTRIDGE. Yes.

Senator JONES of New Mexico. And, therefore, that all this property should be returned without any liquidation or deduction, and our State Department replied taking the contrary position.

Senator SHORTRIDGE. Yes.

Senator EDGE. May I ask a question here, Mr. Chairman? I could not understand everything the witness stated. I simply want to ask if the statement that he made, which the chairman has said is quite clear—I did not understand it all—was purporting to be an answer to or taking exception to the position of Secretary Kellogg as contained in his letter of May 4. I am simply asking if the statement that he has just concluded a few minutes ago was practically answering or taking exception to the position of Secretary Kellogg as contained in his letter to the German ambassador dated May 4, 1926?

The CHAIRMAN. Well, as I understand it the Doctor gave his personal views here to this committee and has taken virtually the ground that was taken by his Government. Now, that is all there is to it.

Senator EDGE. I did not understand it clearly enough, and I wanted to have that clarified.

Senator McLEAN. That is right.

The CHAIRMAN. Doctor, was there anything else that you wanted to present to the committee that you had in mind?

Doctor KIESSELBACH. I do not think so, Senator.

The CHAIRMAN. Doctor, how was it that they arrived at the 80 per cent that was to be paid to the German claimants?

Doctor KIESSELBACH. Well, it was a compromise. Of course, the Germans wanted—

The CHAIRMAN. Well, it was a compromise up, was it not, rather than down?

Doctor KIESSELBACH. No; it was a compromise—

The CHAIRMAN. You wanted 100 per cent, did you not?

Doctor KIESSELBACH. I wanted 100 per cent; yes.

The CHAIRMAN. And our nationals wanted to take their time and collect—

Doctor KIESSELBACH. They wanted to hold the German property.

Senator JONES of New Mexico. They wanted 100 per cent, too.

The CHAIRMAN. Yes; our nationals wanted 100 per cent.

Doctor KIESSELBACH. Yes; certainly.

The CHAIRMAN. Well, now, do you not really think that there is some justice in the position that if anybody is to wait in this matter that it ought to be the German claimants?

Doctor KIESSELBACH. Well, to be quite frank I think that this is a very fair compromise, and that it is not at all in favor of the Germans, because we are so surely convinced from a legal point of view that we are in the right. But my feeling has always been that although those whom I represent have a legal right, it would be much better to look at the matter from a moral viewpoint and therefore I have insisted that it was absolutely necessary for the Germans to sacrifice part of their rights in favor of the American claimants.

The CHAIRMAN. You recognize that if the American claimants and America ever get paid in full they will have to rely upon the 2½ per cent provided for in the Dawes plan?

Doctor KIESSELBACH. Only so far as it was more than 80 per cent. The large claims.

The CHAIRMAN. Yes; I am aware of that. But they are claimants just the same.

Doctor KIESSELBACH. The large claims have to wait for the last 20 per cent, just as we have to wait for the last 20 per cent.

The CHAIRMAN. Well, what excuse do you think that we could offer to our American claimants and the taxpayers of this country in saying that they shall wait for their pay on the payment of the 2½ per cent under the Dawes plan, and the German claimants are paid in full? How could that be justified?

Doctor KIESSELBACH. The Germans will not be paid in full. They get 80 per cent, and the American claimants get 80 per cent, too; and both parties are relying on the Dawes installments for the remaining.

The CHAIRMAN. Yes; but why should Americans be compelled to rely upon that plan?

Doctor KIESSELBACH. For two reasons. One reason, if I may say so, is that I do not think that American claimants will very easily succeed in getting our property confiscated; and another reason is that I believe that under the treaty of Berlin the German private owners have the legal right to get their property released now because Germany has made suitable provisions. For these two reasons I think that a deadlock arises, and that therefore there must be a compromise.

Senator SHORTRIDGE. Who is to determine that suitable provisions have been made? Who is to determine that?

Doctor KIESSELBACH. I do not know. If two parties agree on a question and a dispute arises it is not for me to decide. I can only tell you what my opinion is. I am a party to it, and of course it is only my private view of it.

Senator SHORTRIDGE. Certainly.

Doctor KIESSELBACH. I was asked to explain to the Senators upon what reasons the Germans believe this compromise to be a fair one.

Senator SHORTRIDGE. In other words, I take it your opinion is that Germany has made suitable provision?

Doctor KIESSELBACH. That is my opinion; yes.

Senator SHORTRIDGE. Whether we think so or not is another proposition.

Doctor KIESSELBACH. Yes. I try only to explain the German point of view from what angle we approached this compromise and why we have accepted it.

The CHAIRMAN. Well, I think you have stated it fairly.

Senator JONES of New Mexico. Well, in the preparation of the Dawes plan and fixing the amount which Germany was able to pay, did not the second committee of experts organized by the Reparation Commission eliminate all of this property of German nationals which was in the United States?

The CHAIRMAN. Do you mean did not take it into consideration as to their ability to pay?

Senator JONES of New Mexico. Yes. I notice in the report of the second committee of experts, if I have interpreted that report correctly, a statement that the German assets, so far as the Reparations Commission was concerned, had been diminished to the extent of sixteen and one-tenth billion gold marks, and that that was assumed to have been liquidated by the nations opposed to Germany in the war under the provisions of the Versailles treaty; that while no specific reference was made to the United States in that treaty, it did include in the exclusion of German assets the property of German nationals in the United States. Have you studied that second report of the committee of experts?

Doctor KIESSELBACH. I have not. Senator, I have only read the other report. I know from that report that it provides payments by Germany to the allied powers and to the United States as associated power. That is my remembrance of it.

Senator JONES of New Mexico. At this point I desire to put in the record an excerpt from the report of the second committee of experts. It appears from this report that this committee of experts was created by the Reparations Commission, and that its duty was to ascertain the value of the assets of Germany which existed in foreign countries, and the probability of the German Government being able to use those assets of German nationals in foreign countries for the purpose of raising money under the Dawes plan. This second committee of experts in dealing with that question, on page 4 of the report I have before me, printed in a document, used this language:

Next, we considered what was the net reduction in this total at the time of the armistice.

That is, they were dealing with assets of German nationals in foreign countries:

We took into account on one side the balance of trade, advances by Germany to her allies, loss by seizure and sequestration of property confirmed by the Versailles treaty, and loss through depreciation of the value of property and securities.

And there are various other provisions.

The CHAIRMAN. The whole report is in the record.

Senator JONES of New Mexico. I do not think so.

The CHAIRMAN. Oh, yes; I understood it was ordered printed in the record.

Senator JONES of New Mexico. I do not think I ever asked that it be put in the record.

The CHAIRMAN. I thought it was asked to be put in the record.

Senator JONES of New Mexico. I asked that a copy be furnished to me, and I understood that the clerk was directed by the chairman of the committee to furnish each member of the committee with a copy of the report.

(The report of the second committee of experts, printed both in French and in English, is here made a part of the record so far as the English version is concerned:)

REPORT OF THE SECOND COMMITTEE OF EXPERTS

COVERING LETTER

DEAR MR. CHAIRMAN: I have the honor to present the unanimous report of the committee appointed by the Reparation Commission to inquire into the amount of German exported capital and to consider the means of bringing it back to Germany.

In laying before you the result of our labors may I be permitted in the name of the committee to express the hope that our work may assist in solving the problems involved in the execution of the treaty of peace.

I remain, yours faithfully,

R. MCKENNA.

The CHAIRMAN REPARATIONS COMMISSION.

In pursuance of a decision of the Reparation Commission of the 30th of November, 1923, we were created a committee to consider the means of estimating the amount of German exported capital and of bringing it back to Germany. We were convened in Paris on the 21st of January, 1924, and we have held altogether 38 meetings, first in Paris, then in Berlin, and finally again in Paris. We have examined numerous witnesses and have availed ourselves of the services of trained economists, technical advisers, and expert accountants. We have also studied the published works on the subject by well-known economists, and each member of the committee has furnished reports on particular problems.

Our estimates relate to the 31st of December, 1923. Later events may, of course, have either increased or decreased the amount of German capital abroad.

In our investigation of the amount of capital owned by Germans in foreign countries, we were confronted by very considerable difficulties. There are many ways by which Germans can acquire capital abroad but in most cases no precise figures can be given. It is nearly always a matter of estimate, and the utmost we could hope to do with any degree of certainty was to lay down limits between which the actual amount is to be found. The distance which divides these limits marks the want of precision of the material at our disposal.

One method of investigation, to institute an inquiry through bankers and business men in those countries in which German capital is believed to be deposited or invested, was rejected by us at the outset. We have availed ourselves of all information of a public or official character supplied from countries outside Germany, but we were of opinion that it would be neither proper nor useful to request the disclosure of specific transactions which, in general, would have been entered into under an implied condition of secrecy. Moreover, we felt that even though all obtainable information were freely given to us, it must be extremely defective, as much German capital in foreign countries is certain in existing circumstances to be hidden in various ways under assumed names.

The method we have adopted is altogether different. Our first step was to form an estimate of the total value of German capital abroad at the outbreak of war.

Next we considered what was the net reduction in this total at the time of the armistice. We took into account on one side the balance of trade, advances by Germany to her allies, loss by seizure and sequestration of property confirmed by the Versailles treaty, and loss through depreciation of the value of property and securities. On the other side we considered the sales of German securities, the sales of gold, the accumulation of interest, and finally the effect on the trade balance of the imports into Germany from occupied territories. These imports were commodities either requisitioned without payment, or

paid for, in the case of Belgium and Poland, largely by marks which remained in the country, and, in Rumania and occupied France, as well as in Belgium and Poland, by local currencies which the German Government caused to be printed and issued for the purpose.

Finally, starting from the basis of the remaining pre-war German assets, we examined in detail the various means by which Germans can have increased or diminished their capital abroad during the period from the armistice to the close of the year 1923. The reliability of our final estimate depends upon the completeness of our examination of the different elements which make up the total of German foreign acquisitions and of the various ways in which such acquisitions may have been expended.

The chief method by which Germans have acquired foreign assets since the armistice has been by the sale of mark bank balances. Our estimates of the total sum under this head has been obtained by a procedure founded upon the principle that every foreign sale by a German of a mark bank balance creates at the moment of sale a corresponding holding of a foreign bank balance in Germany. The periodic totals of foreign balances shown in the books of the German banks were disclosed to us; and with the assistance of expert accountants we have been able to ascertain the net proceeds expressed in gold derived from the sale of marks. It is interesting to note that the foreign assets acquired in this way amounted to between seven and eight milliards of gold marks, the whole of which in consequence of the final devaluation of the mark was lost by more than one million foreigners who at one time or another were buyers of mark credits.

This figure is one of the credit factors in estimating the final total.

Other principal sources of German foreign assets have been the sale of goods, securities, real estate, precious metals, and mark banknotes; interest accumulations, tourist expenditure in Germany, German holdings in ceded territories in Poland, Dantzig, etc., foreign money expended by the allied armies of occupation, remittances from Germans abroad, earnings of shipping, railway and canal freights for foreign goods in transit through Germany, insurance profits, etc.

On the other hand, German foreign assets have been expended on the purchase of goods imported, cash payments to the Allies, interest paid on German securities held abroad, German tourist expenditure, etc.

On all these heads of receipt and expenditure, the German statistical records and estimates, official data, bankers', and business reports, and other similar evidence, have been subjected by us to the most critical scrutiny, and their reliability has been tested by our examination of witnesses and inspection of original sources of information. Our investigations and the evidence obtained led us to discard entirely the values of German imports and exports as stated in the official reports, and to revalue all commodities on the basis of the then current world prices with such allowances as the special circumstances of German trade at the time may have rendered necessary.

After a close examination of all the factors which make up the total sum, we are of opinion that German capital abroad of every kind, including capital of varying degrees of liquidity and capital invested in participations in foreign companies and firms, and after taking into account all credit and debit items was at the end of the year 1923 not less than 5.7 milliard gold marks and not more than 7.8 milliard gold marks and we think that the middle figure of 6½ milliard gold marks is the approximate total.

We draw special attention to the foreign currency in Germany which, though not included in our valuation of capital held abroad, is so closely akin to a foreign asset that it must not be overlooked. It may indeed be said that this currency, the total of which we estimate at not less than 1 milliard 200,000,000 gold marks, is a German holding in the most liquid form for conversion into foreign assets.

On the other hand, on a broad view of Germans financial capacity, the value of the property in Germany held by foreigners should not be left out of account. The annual yield from this property, whether in the form of rent, interest, or dividends, is at present inconsiderable and may at any time become subject to special taxation, particularly in the case of rent in respect of real estate purchased at the low prices current in recent years. We estimate, after very close study of the question, that the real estate and securities owned in Germany by foreigners represent a value of from 1 to 1½ milliard gold marks.

The committee have thought it desirable to give in an annex to this report additional information in respect of their estimates of German assets abroad in 1914 as well as of the principal credit and debit factors, both during and since the war, that have gone to make up the final total of German capital abroad.

The second part of our inquiry was to investigate the means of bringing exported capital back to Germany.

The so-called flight of capital in this instance was in the main the result of the usual factors. It arose principally from the failure of the Government to bring its budget into proper relation, and, as a corollary of such failure, from the raising of large loans and the direct issue of paper money. Secondly, it was due to the action of speculators and timid investors who sold their marks against the currency of other countries, while the exporters of goods retained abroad all that was possible of the proceeds of their sales. In the particular case under inquiry, however, the flight of capital was accentuated by the attitude of the people of Germany towards payments to her war creditors, and was marked by new and ingenious devices and schemes for evading restrictive legislation and for cloaking the real ownership of foreign balances.

The failure of the methods employed, both old and new, demonstrates the final ineffectiveness of restrictive legislation when successful evasion is so richly rewarded. Neither legal enactment nor severe penalties resulted in disclosure of assets abroad or hampered the flight of capital. We feel that this would have been true whether the Government had or had not used its best endeavors to enforce the laws and regulations.

In our opinion the only way to prevent the exodus of capital from Germany and to encourage its return is to eradicate the cause of the outward movement. Inflation must be permanently stopped. If the issue of currency is strictly confined within the true limits of national requirements on a stable basis of value, the German with capital abroad will feel assured that he will suffer no loss in bringing it home; the speculator can no longer look for a profit from the sale of marks. We have already seen in the case of Austria how, when the currency is fairly stabilized, the necessities of foreign trade tend to bring back existing foreign balances. Restrictive legislation, which in the main has proved futile in preventing the export of capital, becomes superfluous the moment there is no longer any inducement to evade the law. It is indeed to be feared that laws purporting to compel the return of capital would have the reverse effect to that which might be wished.

The method of securing a currency in Germany capable of maintaining a sufficiently stable international value covers the whole question of budgetary equilibrium and the establishment of a bank of issue on a sound basis. These matters, which fall outside the scope of our inquiry, have been referred by the Reparation Commission to another committee whose conclusions we have the advantage of knowing. If effect is given to their recommendations, we think that a considerable part of the German assets now in foreign countries will return in the ordinary course of trade.

While we are of opinion that special legislation to prevent the export of capital or compel its return is not required when a country's finance is on a stable basis, we recognize that in the case of Germany a period of transition must necessarily ensue before stability can be obtained and confidence restored. We suggest that during this period an amnesty should be granted for a limited time from the penalties imposed by existing enactments and that special terms be offered for subscriptions to Government loans made in foreign currencies. Well-conceived measures of this kind would be helpful in hastening the return of capital and the final restoration of financial equilibrium in Germany, conditions which are essential to the payment of reparation.

We desire to express our sincere thanks to the officers of the Reparation Commission, and to the economists, statisticians, and expert accountants who have aided us, for whose valuable assistance we are greatly indebted.

REGINALD MCKENNA, *Chairman.*
HENRY M. ROBINSON.
ANDRÉ LAURENT-ATTHALIN.
MARIO ALBERTI.
ALBERT-E. JANSEN.

APRIL 9, 1924.

ANNEX

SUMMARY

- I. Assets abroad in 1914.
- II. Period of the war:
 - (a) Surplus of imports and Germany's advances to her allies.
 - (b) Depreciation of pre-war foreign assets; sequestration and liquidation measures.
 - (c) Profits realized by Germany in occupied territories.
 - (d) Sale of gold and German securities.
 - (e) Return from German assets abroad.
- III. Postwar period:
 - (a) Surplus of imports and cash payments made by Germany under the peace treaty.
 - (b) Sales to foreigners of mark credits and bank notes.
 - (c) Sales of gold.
 - (d) Sales of German real property and German securities.
 - (e) Expenditures by foreigners traveling in Germany and by Germans traveling abroad.
 - (f) Expenditure by the armies of occupation.
 - (g) Earnings from shipping, insurance, transit, etc.
 - (h) Income from German investments abroad and from foreign investments in Germany; remittances made by Germans residing abroad.
 - (i) German private property in ceded territories.
 - (j) Foreign bank notes in Germany.

I. ASSETS ABROAD IN 1914

The value of German assets abroad in 1914 has been estimated by different economists at sums varying between 20 and 35 milliard gold marks. Besides these unofficial estimates two estimates of an official nature, as well as a census, have been made by the German Government. The earlier of these two official estimates is that made in 1905 by the Imperial Admiralty; the later one was supplied by the German Government in 1924 in reply to a question raised by the second committee of experts. The census, which only covered securities, was made by the German Government during the war, in August, 1916.

In the question put to the German Government the committee not only asked for an estimate of the foreign assets held by German nationals in 1914 but also requested it to submit its comments on the various estimates already made by German economists.

All these documents—estimates of German economists, and those of neutral, allied, and associated countries, official estimates and census, and the replies of the German Government—have been examined and compared. Taking into account all the factors of valuation, the committee has come to the conclusion that the figure of 28 milliard gold marks may be accepted as representing the value of German assets abroad at the time of the declaration of war, it being understood that this figure of 28 milliards comprises only the assets abroad belonging to German nationals residing in Germany and not those belonging to German nationals residing abroad. In this estimate securities have been taken at their face value in gold marks.

II. PERIOD OF THE WAR

(A) SURPLUS OF IMPORTS AND GERMANY'S ADVANCES TO HER ALLIES

The difficulty encountered by Germany in exporting her goods during the war, as well as her persistent endeavors to increase her imports by every possible means, in order to provide for the requirements of her armies, naturally produced a surplus of imports, considerably in excess of the figures of the normal pre-war deficit. To this deficit in Germany's foreign trade balance must be added the sums advanced by Germany to her allies to enable them to pay for their imports, for which she received no corresponding return. The figure indicated for these two items may be considered to be reliable and amounts to an aggregate sum of 15.2 milliard gold marks, subject to the modifications referred to in paragraph (c).

(B) DEPRECIATION OF PRE-WAR FOREIGN ASSETS—SEQUESTRATION AND LIQUIDATION MEASURES

Various estimates of the reduction in German assets abroad during the war as a result of depreciation have been made by several economists, whose figures are generally based on an estimated total of from 20 to 25 milliard gold marks for German assets in 1914. Their estimates seem too low, if we take as a basis the figure of 28 milliards adopted by the committee for German assets abroad in 1914. This impression is moreover confirmed by information which the committee has obtained by its own investigation.

It is impossible to adopt a definite figure in determining the value of the assets seized and liquidated in the Allied and Associated countries. On the basis of information obtained by the committee from the Governments of the allied and associated powers as well as from Germany, the committee has been able to estimate at approximately 16.1 milliard gold marks the reduction in German assets abroad during the war, as a result of depreciation and liquidation and sequestration measures. In adopting this figure no allowance has been made for the fact that certain German assets abroad may have been utilized to cover the payment of imports, nor for the fact that German assets abroad may have increased owing to the accumulation of the interest accruing on these assets. These several items are discussed elsewhere. The above figure therefore represents a net reduction in German assets abroad for which Germany during the war period received no return. These assets underwent a further decrease in value during the period following hostilities, which decrease was taken into account.

Lastly, the committee is of opinion that both during and since the war, the category of assets in neutral countries has likewise undergone a reduction in value, and that in particular the greater part of such securities held by Germans has no longer a value equivalent to their face value, even taking into account the effect of the decline in the value of gold.

(C) PROFITS REALIZED BY GERMANY IN OCCUPIED TERRITORIES

An examination of German economic measures taken in Belgium during the war, to which the attention of the committee was called, suggested that substantial profits had accrued to Germany from the exploitation of occupied territories. Consequently, the committee has made a careful study covering not only German operations in Belgium and northern France, but also those in Poland and Rumania.

No attention has been paid to the purely military aspects of these operations, such as, for instance, requisitions intended to provide for the partial subsistence of the German occupying troops. Quite apart from such matters, however, it was found that the profits realized by Germany by requisitions and by other methods in occupied territories are closely connected with the deficit of the German balance of trade. With the help of German official documents, in particular reports by the military administration drawn up during the war and German memoranda estimating the value of war damages, the committee has ascertained that the profits realized by Germany were principally obtained as follows:

Germany obtained in occupied territories considerable quantities of commodities which through the operation of centralized importing companies specially created for this purpose, were transported to Germany for internal consumption. Most of these goods were either not paid for at all or were paid for in paper marks which were subsequently left in the country, and amounted in the case of Belgium to six milliard paper marks, or were purchased through the medium of issues of local paper currency. The special object of such issues, according to a statement by the German staff, was to enable Germany and her allies to receive goods from occupied territories free of charge during the whole period of hostilities.

By requisition or in exchange for paper marks or local currency, Germany also obtained considerable quantities of the currency of invaded countries. Thus in the north of France the German military authorities imposed on towns fines and levies for which payment was required in German money, gold coin, or notes of the Bank of France.

Finally, foreign assets were acquired by Germany, specially in Belgium and France, notably by means of sequestration of securities, coupons, and other credits, and these, like the bank notes mentioned above, served in part to pay for imports from neighboring neutral countries.

It must also be pointed out that when the German Coal Centrale in Belgium issued export licenses for coal for Holland, Switzerland, or Sweden, the German authority kept for itself the foreign currency thus obtained, and forced the mines to accept paper marks.

The committee has adopted the figure of from 5.7 to 6 milliard gold marks as corresponding to that portion of the profits derived from this exploitation of Belgium, Northern France, Poland, Lithuania, Rumania, etc., representing imports for which no payment was made and which in consequence had not been allowed for in her balance of accounts.

(D) SALE OF GOLD AND GERMAN SECURITIES

The sale of gold and securities was the principal means whereby Germany paid for her imports during the war. The export of gold, which took place mainly during the early years of the war, reached a total amount of 1 milliard gold marks.

As regards German securities, widely diverging estimates have been made of the amounts sold. In our opinion the total figure is not far from 1 milliard gold marks.

(E) RETURN FROM GERMAN ASSETS ABROAD

The revenue which Germany derived from her assets abroad was very considerably diminished immediately after the declaration of war and further reductions occurred during the period of hostilities.

It should, indeed, be noted that interest ceased to be paid on the assets held by Germany in countries with which she was at war. Some of these assets were sold during the war and the depreciation of others became very marked toward the end.

On the other hand, the industrial securities, particularly those of neutral countries, continued to pay interest at rates frequently higher than before the war.

While the committee has been unable to determine exactly the variations for each year of the war in the revenue derived from German assets abroad, it has at least been able to make an estimate which may be taken as very nearly accurate.

III. POSTWAR PERIOD

(A) SURPLUS OF IMPORTS AND CASH PAYMENTS MADE BY GERMANY UNDER THE PEACE TREATY

One of the main causes of the reduction of German assets abroad during the postwar period arose from the necessity for Germany to cover the deficit in her trade balance and to meet the cash payments which had to be made to the Allies under the treaty of Versailles. These two items together amount to between 9 and 10 milliard gold marks.

As already stated in the report, the figures given in the official German foreign trade statistics are quite inaccurate for certain periods. This observation applies particularly to the figures originally published.

For this reason it was necessary to revise completely the balance given for every year. Taking into account the various factors entering into the calculation, the committee is of opinion that this revision has made it possible to reach a figure more nearly equal to the actual excess of imports than had been the case in previous reports dealing with this question. The fixing of the amount of the deficit in the trade balance is of true importance since any valuation that is to be made of German assets remaining abroad largely depends on the figure finally adopted for that deficit.

The cash payments made by Germany to the Allies—to the Reparation Commission, under the reparation recovery act, payments to the clearing office, etc.—do not give rise to dispute.

(B) SALE TO FOREIGNERS OF MARK CREDITS AND BANKNOTES

Germany has acquired foreign assets in large volume since the armistice through opening credit accounts in her banks for the benefit of foreigners. These credits were paid for by the foreigners in the money or credits of other countries, and as they underwent a constant shrinkage in real value through the depreciating value of the mark, German economy profited largely from the transactions. The committee made a careful study of the values so acquired by an investigation, with the aid of expert accountants, of the mark credit balances on foreign account in the principal banks of Germany during the postwar years.

It was found that there had been during this five-year period more than a million individual accounts of this kind. In most cases the mark credits of these accounts had not been immediately utilized and had undergone a process of shrinkage through the depreciation of mark values that amounted to a veritable evaporation.

The work of the expert accountants was directed to determine as nearly as possible the aggregate amount of the shrinkages in these very numerous accounts that was due to the depreciation of the value of the mark. With this end in view the leading banks in Germany were asked to transcribe from their books the data showing the credit balances and the amounts of debits in the accounts of all foreigners at the close of each month from the end of 1918 to the end of 1923.

After the sums indicated had been converted to gold equivalents at the current rate of exchange, it was possible to draw close inferences as to the total gains, accruing to German economy as a whole. The data furnished by the banks were submitted to careful checking by the expert accountants, and it was found that they had been correctly compiled.

Credits in German marks were purchased by the citizens of a great many nations, but the largest amounts were taken by the citizens of a relatively restricted group of countries.

The methods used in determining the value of the assets acquired by the German banks in this way were subjected to an interesting check which consisted of taking a single account of a foreigner who had engaged in speculative operations on a considerable scale, and converting the figures of the transactions to a gold basis for every day on which any debit or credit entry was recorded. The results indicated that there was no tendency for this detailed method of conversion to yield results materially different from those found by the more general mass methods that it was necessary to employ in computing the figures for Germany as a whole.

When the whole inquiry, which was of considerable length, had been completed it was found that Germany had profited by the sale of mark credits by an amount of from 7 to 8 milliards of gold marks. In addition the sale of paper marks in foreign countries had resulted in profits amounting to from 600,000,000 to 700,000,000 gold marks, or a total from these two sources of 7.6 to 8.7 milliards of gold marks.

(C) SALES OF GOLD

German official statistics record sales abroad by Germany principally in the years 1919-1921 and 1923 of gold to a total amount of 1½ milliard gold marks. The accuracy of these figures is not disputed.

(D) SALES OF GERMAN REAL PROPERTY AND GERMAN SECURITIES

During the period characterized by the rapid depreciation of the mark, sales of real property to foreigners reached an unwonted development in Germany.

In estimating the proceeds of such sales, the committee had before it various statistics indicating in detail the number and amount of sales of real property to foreigners since the war in some of the principal towns of Germany, and also in districts of varying economic character.

As regards securities, Germany was able during the first part of the post-war period to market some of her securities abroad but as soon as her financial position became more uncertain, most of these transactions were suspended.

In the aggregate, the committee considers that sales of German real property and securities to foreigners amounted to about 1½ milliard gold marks.

(E) EXPENDITURE BY FOREIGNERS TRAVELING IN GERMANY AND BY GERMANS TRAVELING ABROAD

During the five years which have elapsed since the armistice, considerable sums have been spent in Germany by large numbers of foreigners who have traveled and lived in the country. Our estimate of the expenditure by these travelers was facilitated by the official statistics kept by the largest German towns and by the special report on the subject supplied by the German Government. The committee was able to obtain a fairly exact idea of the number of foreigners who came to Germany during the period in question, the average length of their stay and the daily expenditure of each traveler.

As against this, numerous German travelers belonging mostly to the wealthier classes have stayed in foreign countries, especially in the last two or three years. Their expenditure has to be deducted from the expenditure by foreigners in Germany referred to above, and very considerably reduces the amount of the German assets realized from that source.

(F) EXPENDITURE BY ARMIES OF OCCUPATION

During the post-war period, a certain sum has been realized by Germany through the expenditure in foreign currency, or in marks bought with foreign currency, by the troops occupying German territory.

Each of the Governments having had armies of occupation in Germany has supplied the committee with a detailed estimate of the expenditure made by the officers and men or by the various army services. These estimates were checked in several ways by a series of calculations relating to each army's different methods. The results of these different calculations have been combined.

(G) EARNINGS FROM SHIPPING, INSURANCE, TRANSIT, ETC.

Earnings from shipping, insurance, commissions, transit, were an important source of German income prior to 1914, but during the war such earnings in great measure disappeared. In the five years 1919-1923 some of the lost ground has been regained, particularly in the field of shipping and insurance, and the committee has taken this item into account.

(H) INCOME FROM GERMAN INVESTMENTS ABROAD AND FOREIGN INVESTMENTS IN GERMANY—REMITTANCES MADE BY GERMANS RESIDING ABROAD

The total amount of the income produced by German assets abroad since 1919 is of course substantially below that produced by German assets abroad before the war. The assets held abroad by Germany since the war represent indeed only a small and for some part unproductive fraction of her pre-war holdings. It is true, on the other hand, that the payments which Germany has had to make since 1919 in respect of German securities held by foreigners have been inconsiderable. After a careful study of the question, the committee came to the conclusion that a set-off of the two items—income from German investments abroad and income from foreign investments in Germany—resulted in a small balance in Germany's favor for the whole of the postwar period.

The remittances sent to Germany by German nationals residing abroad and German connections and sympathizers amounted to a considerable figure in Germany's favor.

(I) GERMAN PRIVATE PROPERTY IN CEDED TERRITORIES

Most of the valuations of German property abroad have taken little or no account of the value of German private property in the ceded territories of Silesia, Posen, Danzig, etc.

These properties are included in our own estimate in so far as, according to the definition adopted by the committee, they are owned by Germans residing in Germany. Although it is very difficult to determine with any precision the extent of these properties, the committee considered that it should not exclude from its valuation certain industrial assets, particularly those in upper Silesia.

(J) FOREIGN BANK NOTES IN GERMANY

There is in Germany a large quantity of foreign bank notes (dollars, florins, Scandinavian crowns, Swiss francs, pounds sterling, and more especially in the occupied territory, Belgian and French francs). The exceptional plight of the German mark has influenced Germans in acquiring stable currencies wherever

possible and on a large scale.' These foreign notes have remained in the country instead of finding their way abroad again through the normal channel of trade, as would have been the case in ordinary circumstances.

Various estimates of the total amount of such notes were made in Germany, particularly toward the end of 1923. The committee has compared the different estimates with the information which it collected in Germany and other countries. In its opinion, the value of the foreign notes existing in Germany at the end of 1923 amounted to about 1.2 milliard gold marks.

Senator JONES of New Mexico. The part to which I particularly refer is found on page 10 of this report, and is as follows:

It is impossible to adopt a definite figure in determining the value of the assets seized and liquidated in the allied and associated countries. On the basis of information obtained by the committee from the governments of the allied and associated powers as well as from Germany, the committee has been able to estimate at approximately 16.1 milliard gold marks the reduction in German assets abroad during the war, as a result of depreciation and liquidation and sequestration measures. In adopting this figure no allowance has been made for the fact that certain German assets abroad may have been utilized to cover the payment of imports, nor for the fact that German assets abroad may have increased owing to the accumulation of the interest accruing on these assets. These several items are discussed elsewhere. The above figure therefore represents a net reduction in German assets abroad for which Germany during the war period received no return. These assets underwent a further decrease in value during the period following hostilities, which decrease was taken into account.

So it would seem that the Dawes Reparations Commission in fixing the ability of Germany to pay excluded that part of German assets which were in the United States, as well as in Great Britain, France, and other countries, and which had been used for the payment of claims against Germany.

Senator EDGE. Not which had been used, but which had been held, Senator Jones.

Senator JONES of New Mexico. Which was held and assumed not to be available for Germany for the purpose of making reparations payments.

Senator EDGE. It has not been actually used but is held as security.

Senator JONES of New Mexico. Which had been actually used by all the countries except the United States.

Senator EDGE. And I am speaking of the United States.

The CHAIRMAN. Doctor Kiesselbach, you may now answer.

Doctor KIESSELBACH. As far as I could follow it this speaks only of property seized under the Versailles treaty, and then as far as I remember this report was made in 1923 or 1924, by considering the German property seized in America, that report would, at least by implication, have meant interference with American policy. No one could know then what the United States of America would see fit to do with this property. Therefore my belief is that it could not be taken into consideration, and that is was simply to be left out.

The CHAIRMAN. Every dollar that you received would be an advantage to that extent.

Doctor KIESSELBACH. As to ability to pay.

Senator SHORTRIDGE. The treaty of Versailles was signed on June 28, 1919. The so-called Knox resolution was approved by the President July 2, 1921. Then followed the treaty of Berlin, and Article I of that treaty carries into the treaty Section V of the Knox resolution and makes it, of course, in all of its provisions a part of the

treaty. Now, do I understand your position to be that Germany has done all, or has promised, or has now agreed to do all that is required of Germany under that treaty of Berlin?

Doctor KIESSELBACH. Yes; that is my belief, and under the Dawes plan Germany is not allowed to do anything more. Germany has to confine herself to paying these installments, and is not allowed to enter into an agreement with any power to pay something else.

Senator SHORTRIDGE. You claim that the Dawes agreement has in some way and to some extent added to or modified the treaty of Berlin?

Doctor KIESSELBACH. Oh, not at all. If I may say so it only complies with it by providing for suitable provision, under the control of the powers. All of the powers have come together and considered the capacity of Germany to pay, and have stated what would be the utmost for Germany to pay, and then provided for very far-reaching securities for those payments, and now Germany's finances are controlled, and they have done everything to see to Germany's payments and to safeguard those payments. Therefore we believe and we contend from our point of view that we have satisfied the allied powers and other powers who wanted us to pay to our capacity.

Senator SHORTRIDGE. In other words, I understand your contention is that there, I may say, through the Dawes plan, Germany has done or agreed to do all that is required of her under the Berlin treaty?

Doctor KIESSELBACH. Yes; all that we can, all that we could call suitable provision.

Senator SHORTRIDGE. Well, do you contend that the United States has committed itself to your contention that you have made suitable provision?

Doctor KIESSELBACH. I do not contend that, no. I have simply explained my viewpoint.

Senator SHORTRIDGE. I see. That is all I wish to ask.

The CHAIRMAN. Any other questions?

Senator REED of Pennsylvania. Just to carry that on one step further, in your viewpoint it is suitable provision for the satisfaction of these claims?

Doctor KIESSELBACH. Yes.

Senator REED of Pennsylvania. But you do not contend that the United States has pronounced it as in its opinion suitable provision?

Doctor KIESSELBACH. I do not.

The CHAIRMAN. That will be all Doctor Kiesselbach.

Senator JONES of New Mexico. There is one point I want to bring out from the Alien Property Custodian.

The CHAIRMAN. Will Senator Sutherland take the stand.

STATEMENT OF HON. HOWARD SUTHERLAND, ALIEN PROPERTY COSTODIAN, WASHINGTON, D. C.

Senator JONES of New Mexico. Senator Sutherland, I should like to put into the record what was done, if anything, with respect to the property of German nationals who were residing in the United States during the war.

Mr. SUTHERLAND. Well, we seized those properties, so far as we could ascertain their existence. It was supposed to be all reported, and then demands were made for that property, and it was taken possession of under those demands. And it is to a large extent still held, where it has not been returned.

Senator JONES of New Mexico. Do you mean to include in that statement all property of all German nationals who were residing in the United States during the war?

The CHAIRMAN. No; that property was not taken unless they were interned. If they were interned that property was taken.

Mr. SUTHERLAND. I had reference especially to interned German nationals.

Senator JONES of New Mexico. I think the properties of interned German nationals occupy quite a different status from that of other property of German nationals residing in the United States.

Senator SHORTRIDGE. That was not taken.

Mr. SUTHERLAND. No; that was not taken.

Senator JONES of New Mexico. That is the point I wanted to get clear in the record—that the property of German nationals who resided in the United States during the war and had property in the United States was not affected by the provisions of the trading with the enemy act, or the duties of the office of the Alien Property Custodian.

Mr. SUTHERLAND. No; it was affected if they were alien enemies living on the other side and if they were interned Germans on this side.

Senator JONES of New Mexico. I wanted to get this in the record for the specific purpose of making clear that many expressions of Americans and others with respect to confiscation related to the taking of that class of property and not to property of German nationals who were residing in the United States during the war.

Senator SHORTRIDGE. And who were not offensive or who did not violate any of our laws.

Senator JONES of New Mexico. The Senator is making a good suggestion.

Senator SHORTRIDGE. I think you have made that perfectly clear.

Senator JONES of New Mexico. Do you individually know, Senator Sutherland, anything about the patents which are still held by the Alien Property Custodian, as to their value?

Mr. SUTHERLAND. I have had a statement prepared giving completely that information.

The CHAIRMAN. It would be a good thing to have it in the record right here. It is not very long.

Senator JONES of New Mexico. I think so.

Mr. SUTHERLAND. I will insert in the record the statement showing completely the situation with reference to patents, trade-marks, and copyrights.

(The statement furnished by the Alien Property Custodian, entitled "Patents, Trade-marks, and Copyrights Sold by the Alien Property Custodian from October 6, 1917, to January 1, 1927," is as follows:)

Patents, trade-marks, and copyrights sold by the Alien Property Custodian from October 6, 1917, to January 1, 1927

Assignee	Date	Property	Consideration	Average price
Martin E. Kern.....	Jan. 13, 1919	1 design, 2 trade-marks, 130 patents.	C. M. ....	.....
Patrola Manufacturing Co.....	Jan. 25, 1919	9 trade-marks.....	\$5,100	\$500.00
J. F. Sturdy's Sons Co., and Leach & Garner Co.....	Jan. 30, 1919	8 patents, 3 trade-marks, 4 trade names.	\$313,000	20,800.00
Sterling Products Co.....	Feb. 3, 1919	558 patents, 1 trade-mark.....	C. M. ....	.....
United States of America represented by Secretary of Navy. "Do.....	Feb. 6, 1919	34 patents.....	\$1,190	35.00
Kimberly Phonograph Co.....	Feb. 10, 1919	12 contract rights, 72 patents.....	\$400	5.32
Charles A. Fulle.....	Feb. 12, 1919	Certain trade-marks, etc.....	\$1,000	.....
Collin & Co., A. B. Leach & Co., Warren A. Wilbur.....	Feb. --, 1919	1 application.....	None.	.....
Alexander Harris.....	Mar. 19, 1919	1 patent, 2 trade-marks, 15 trade names.	C. M. ....	.....
Allan A. Ryan.....	Apr. 10, 1919	5 patents.....	C. M. ....	.....
Chemical Foundation (Inc.).....	do.....	20 patents, 25 trade-marks.....	C. M. ....	.....
Howard E. Mitchell.....	Apr. 12, 1919	4,123 patents, 845 trade-marks, 402 copyrights, 46 contracts.	\$250,000	45.39
Locomotive Superheater Co.....	Apr. 22, 1919	44 patents and interest in two agreements.	\$10,000	217.35
American Radio Co.....	Apr. 26, 1919	2 contracts, 8 patents.....	25,000	2,500.00
George U. Tompers.....	Apr. 30, 1919	12 patents, 23 trade-marks, 9 labels.	C. M. ....	.....
Walter R. Comfort and Joseph Krieg.....	Apr. --, 1919	4 patents.....	C. M. ....	.....
George U. Tompers.....	May 2, 1919	do.....	C. M. ....	.....
George U. Tompers.....	do.....	5 patents.....	C. M. ....	.....
Chemical Foundation (Inc.).....	do.....	22 trade-marks.....	C. M. ....	.....
Lehn & Fink.....	May 6, 1919	2 trade-marks.....	50	25.00
Chemical Foundation (Inc.).....	May 13, 1919	14 patents.....	500	35.70
L. M. Wheelock.....	May 15, 1919	1 trade-mark.....	1,000,000	.....
Walter B. Lasher.....	May 23, 1919	1 patent.....	50	.....
Whiting & Davis.....	do.....	17 patents.....	C. M. ....	.....
Harry D. Robbins.....	May --, 1919	17 patents, 1 trade-mark.....	C. M. ....	.....
D. E. Matthies.....	June --, 1919	4 patents.....	C. M. ....	.....
Gustave Thurnauer.....	June 3, 1919	2 patents.....	100	25.00
Harry P. Friedman and Morris Friedman.....	June 10, 1919	4 patents.....	C. M. ....	.....
Chemical Foundation (Inc.).....	do.....	14 trade marks, 1 label.....	C. M. ....	.....
Walter M. Nones.....	June 17, 1919	73 patents.....	3,650	50.00
Holley Securities.....	June 21, 1919	22 patents.....	C. M. ....	.....
Chemical Foundation (Inc.).....	do.....	34 patents, 11 trade-marks.....	C. M. ....	.....
Bishop Gutta-Percha Co.....	June 26, 1919	3 patents, 3 trade-marks 3 contracts.	450	50.00
J. C. Hoffman.....	June 23, 1919	1 trade-mark.....	C. M. ....	.....
Robert J. Metzler.....	July 1, 1919	42 patents.....	C. M. ....	.....
Thomas Hillery.....	July 16, 1919	36 trade-marks, 1 label.....	C. M. ....	.....
Waldes & Co.....	July 18, 1919	6 trade-marks.....	C. M. ....	.....
Henry Pfleiffer, Gustav A. Pfleiffer, and Garfield D. Werner.....	July 25, 1919	1 patent, 1 design, 75 trade-marks, 20 patents, 16 trade-marks, 2 prints.	Returned.	.....
Peter F. Daly.....	do.....	2 trade-marks.....	C. M. ....	.....
Ralph Burt Phillips.....	Aug. --, 1919	2 patents.....	C. M. ....	.....
David McMoran.....	Aug. 18, 1919	1 patent, 3 trade-marks.....	C. M. ....	.....
Joseph Kaufman.....	Aug. 25, 1919	3 patents.....	C. M. ....	.....
Adolph P. Link.....	Sept. 15, 1919	do.....	C. M. ....	.....
Helmrich Waldes.....	Sept. 26, 1919	7 patents.....	Q	.....
Bernard R. Armour.....	Sept. 30, 1919	2 trade-marks, 11 trade names.	C. M. ....	.....
Chemical Foundation (Inc.).....	Oct. 17, 1919	21 patents.....	1,050	50.00
T. V. Schiavoni.....	Oct. 25, 1919	2 trade-marks, 163 trade names, 250 trade numbers, 1 label.	C. M. ....	.....
American Radio Co.....	Nov. 26, 1919	3 patents.....	.....	.....
Chemical Foundation (Inc.).....	Dec. 9, 1919	22 applications.....	1,100	50.00
Julius M. Reis and Ben Reis.....	Dec. 16, 1919	1 patent.....	C. M. ....	.....
Donald D. Davis.....	do.....	3 trade-marks, 47 patents.....	C. M. ....	.....
William Kropff.....	Feb. 3, 1920	1 patent, 1 label 17 trade-marks, 1 copyright, 45 trade names.	C. M. ....	.....
Chemical Foundation (Inc.).....	Feb. 26, 1920	6 contracts.....	300	50.00
Do.....	Mar. 9, 1920	26 patents, 20 trade-marks.....	2,300	50.00
John Detlens.....	Mar. 11, 1920	7 trade-marks.....	C. M. ....	.....
Tanners Products Co.....	Mar. 31, 1920	9 patents, 10 trade marks.....	C. M. ....	.....
United States of America.....	Apr. 3, 1920	Infringement and contract rights.	.....	.....
Do.....	do.....	Damages and profits under 48 patents.	.....	.....
Do.....	do.....	2 contracts.....	2,000	40.00
William Kropff.....	do.....	7 trade-marks (Cuban & Porto Rican).	C. M. ....	.....

¹ Returned (order of Attorney General).

Patents, trade-marks, and copyrights sold by the Alien Property Custodian from October 6, 1917, to January 1, 1927—Continued

Assignee	Date	Property	Consideration	Average price
Wm. Waite Snow	Apr. 21, 1920	10 patents	C. M.	
Chemical Foundation (Inc.)	May 4, 1920	35 patents	\$1,750	\$30.00
Waterous Fire Engine Co.	May 13, 1920	12 patents	C. M.	
Chemical Foundation (Inc.)	May 15, 1920	403 patents	5,000	12.42
Merton E. Crush	June 8, 1920	33 patents	C. M.	
Thierry & Co.	July 21, 1920	1 patent	C. M.	
Chemical Foundation (Inc.)	Dec. 21, 1920	2 patents	100	50.00
J. P. Devine	Feb. 7, 1921	14 patents	C. M.	
Chemical Foundation (Inc.)	Feb. 10, 1921	364 patents	5,000	14.15
Sterling Products (Inc.)	Apr. 25, 1921	Certain rights under 2 patents	100	50.00
Chemical Foundation (Inc.)	Apr. 27, 1921	11 patents	550	50.00
Koppe Industrial Car Equipment Co.	June 15, 1921	17 patents	C. M.	
Edward B. Marks Music Co.	Sept. 24, 1921	1 copyright	Returned	
American Cellfone Co.	Sept. 30, 1921	2 patents	Returned	
Goode Patent Manufacturing Co. (Inc.)	Feb. 3, 1922	do	(0)	
DuoScope (Ltd.)	Feb. 14, 1922	1 patent	(0)	
Julius E. Lilienfeld	Apr. 7, 1922	do	(0)	
Albert T. Otto	Sept. 26, 1922	7 patents	1,000	142.85
Ernst Gideon Bek Manufacturing Co.	Nov. 9, 1922	3 patents	350	110.00
Oil Elevator Co.	Nov. 10, 1922	1 patent	500	
Coprus Engineering Corporation	Feb. 17, 1923	do	500	
Dr. Albert Knaiber	Sept. 22, 1923	do	200	
The Bartlett Hayward Co.	Dec. 5, 1923	do	7,500	
The United States Vinasse Fertilizer Corporation	Dec. 14, 1923	do	50	
Hall Co.	Feb. 28, 1924	do	200	
R. H. Conney Co.	Mar. 4, 1924	do	1	
Clair W. Fairbank	Mar. 10, 1924	5 patents	3,500	700.00
Westinghouse Electric & Manufacturing Co.	Sept. 4, 1924	2 patents	10,000	5,000.00
Richard Siebse	Nov. 6, 1924	5 patents	250	50.00
Skayef Ball Bearing Co.	Oct. 19, 1925	1 patent	5,000	
Armin Eichler	Jan. 9, 1926	do	(0)	
Safety Car Heating & Lighting Co.	Dec. 8, 1926	do	(0)	

² Corrective assignment.

³ Returned under claim.

⁴ Returned under court order.

NOTE.—Where patents, trade-marks, and copyrights were sold with the assets of various corporations, no amount was set aside for the value of such patents, trade-marks and copyrights.

The CHAIRMAN. You do not give any estimated value of the patents in that report?

Mr. SUTHERLAND. We give here the number of patents, trade-marks, and copyrights seized, and the disposition by number; those that were sold and licensed, and the total number held. We hold now comparatively few that have not been licensed. We hold some that we have licensed so that they are being used. They are held subject, of course, to the license.

Senator McLEAN. Has a statement of interned property and its character been put into the record as yet?

Mr. SUTHERLAND. The amount of property seized of interned Germans?

Senator McLEAN. Yes; the character and value; has it been put in the record in that way?

Mr. SUTHERLAND. I think not. I will see if that information is available, and if so, will furnish it for the record.

(The statement called for and as afterwards furnished by the Alien Property Custodian, is here made as part of the record, as follows:)

*Property held by Alien Property Custodian as belonging to interned enemies
(estimated only)*

Total amount held Feb. 15, 1919.....	\$3,437,898.17
Returned under claim to Oct. 31, 1926.....	3,442,498.17
Amount held Oct. 31, 1926.....	15,400.00

Division of property held by Alien Property Custodian (estimated only)

German.....	\$251,709,441.83
Austrian and Hungarian.....	12,478,182.31
Interned.....	15,400.00
Others.....	7,334,842.75
Total.....	271,537,866.89

Senator JONES of New Mexico. As to the patents in your possession, have you anyone in your office whose duty it has been to study the patents now held by the Alien Property Custodian with a view to estimating their value?

Mr. SUTHERLAND. I do not think that any real estimate of their value has been made. Do you mean those still held, either under license or otherwise?

Senator JONES of New Mexico. Those still held by the Alien Property Custodian.

Mr. SUTHERLAND. Whether licensed or not?

Senator JONES of New Mexico. Where the title is still in the Alien Property Custodian.

Mr. SUTHERLAND. We hold the title subject to the licenses which have been granted, mostly through the Navy Department, you know, and are now being used by the Navy Department.

The CHAIRMAN. I think they must have some record there as to the number of licenses, and what they get for the licenses per annum. That will give us the only real value. In so far as the Government holding those patents is concerned, I notice here there are 5,415 of these patents upon which licenses have been issued.

Senator JONES of New Mexico. It would be important to know what we are getting for those.

Mr. SUTHERLAND. Colonel McMullen can give you more information about that than anybody else. It has passed out of our hands largely. While we hold nominal title, yet having licensed them to the Navy Department, they have had to do with the royalties and all that sort of thing, and would have more opportunity to judge of their value than we.

The CHAIRMAN. Will you tell Colonel McMullen that the committee would like to know the total received for the 5,834 patents sold outright; and we would like also to receive information as to the amount of annual income received from the 5,418 licenses, and that is the great bulk of the number seized.

Senator JONES of New Mexico. I should like for the Alien Property Custodian to put himself in position to tell us, or to have someone in his bureau to tell us, about the patents which he still holds and which have not been licensed or sold, and give us some data with respect to them from which we may get some idea as to the value of these patents.

The CHAIRMAN. There are only 77 of them, I see from this statement, that are not licensed or sold. I suppose that this statement which is now in the record is complete up to date. Then I should like to know the amount received annually from the licensed patents, trade-marks, and so on which this report shows numbers 5,413.

Senator SHORTRIDGE. For the benefit of the committee I should like to remind you, and it may be recalled, that under a resolution introduced by Senator King there was an inquiry made as to many matters, and particularly in respect of patents taken over that were seized by the Alien Property Custodian. There were many hearings held by the subcommittee appointed, of which I happened to be chairman. In those proceedings this subject matter was elaborately testified to. The testimony was printed and is available. Mr. Garvan, I remember, was on the stand for many hours, and in a carefully prepared statement he dealt with this immediate subject matter. I suggest that to this committee and to Senator Sutherland, for in that document you may find a great deal of information in respect of this subject.

Mr. SUTHERLAND. These matters were all dealt with and disposed of in this way before I ever came into office, and therefore I am not as familiar with the details as I otherwise would be.

Senator JONES of New Mexico. Can not we call upon some one, either in the bureau of the Alien Property Custodian or in the War Department, to digest that testimony for us? It would be a tremendous job, I realize.

Mr. SUTHERLAND. Colonel McMullen has given a great deal of study to that subject and knows more about it than anybody else. What we get from the Navy Department for all the patents that are licensed to them is \$100,000 a year. That is all that the Alien Property Custodian's office gets for it. What they get from them I do not know. That is a matter that Colonel McMullen, no doubt, could tell you.

Senator SHORTRIDGE. In the hearing to which I have referred it was testified as to the number of patents seized, their general character, their problematical potential value, etc. It is all set forth in those hearings.

Senator JONES of New Mexico. I have in mind two things which it seems to me this committee ought to insist upon from some source:

(1) The basis and valuation of these patents, or rather information which will enable the committee to devise some definite plan for the valuation of these patents; and

(2) The value of those which the Government took over for its use. So that, frankly speaking, we want to eliminate this arbiter from this bill and make a direct provision for the ascertaining of these values, not only of ships but of these patents also, so that this committee can recommend a definite sum to be appropriated for these things which were taken over by the Government of the United States.

Senator REED of Pennsylvania. Just in line with that, Senator Sutherland, have you the appraisal of the radio stations that were seized?

Mr. SUTHERLAND. I have a copy here of the appraisal which was made.

Senator REED of Pennsylvania. Of which station?

Mr. SUTHERLAND. Of the Sayville station.

Senator REED of Pennsylvania. One other than Sayville was seized, but was surrendered to the owners, was it not?

Mr. SUTHERLAND. Yes, sir.

Senator REED of Pennsylvania. So the Sayville station is the only one which was seized and has been retained?

Mr. SUTHERLAND. Yes.

Senator REED of Pennsylvania. What is the valuation put upon that station?

Mr. SUTHERLAND. The total value of \$33,016 was put upon that.

Senator REED of Pennsylvania. I think it would be interesting to put in the record at this point the letter of appraisal, showing the date of the seizure and method of appraisement. It is only one page long.

Mr. SUTHERLAND. I have that with the detailed inventory making up the figures.

Senator REED of Pennsylvania. That is pretty long and goes into great detail.

Mr. SUTHERLAND. It is signed by C. W. Waller, and is dated June 24, 1918.

Senator REED of Pennsylvania. I think the letter ought to be put in evidence, but unless some member of the committee wants the detailed appraisal it seems to me unnecessary to cumber the record with it.

Senator JONES of New Mexico. I should like to know who made the appraisal.

Senator REED of Pennsylvania. It appears by the record that it was Mr. Waller. Do you know, Senator Sutherland?

Mr. SUTHERLAND. I really do not know.

Senator REED of Pennsylvania. Could you find out?

Mr. SUTHERLAND. Yes; I could find out.

Senator JONES. And I should like to have you find out by whom he was appointed.

(The letter referred to, to be furnished by the Alien Property Custodian, together with the other data asked for, and afterwards furnished, is here made a part of the record, as follows:)

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., June 24, 1918.

ALIEN PROPERTY CUSTODIAN,
Washington, D. C.

SIR: The "inventory" of high-power radio station herewith attached has been prepared by the undersigned, and covers the entire physical and personal property of the Atlantic Communication Co., located at Sayville, Long Island, N. Y. The property has been classified under different headings, and the values placed on same are based on what might be realized in disposing of the non-operating equipment in the open market. The larger part of the plant equipment has no operating value, due to its being of foreign manufacture, and in a very bad state of repair; therefore, it can only be appraised at scrap value.

The buildings have no further use from the standpoint of operations, and can only be considered as storerooms or temporary quarters for attendants.

The towers are constructed of light-weight materials and are of a design not considered good practice for present-day construction of "high-power radio" work, but a substantial price has been allowed for same, as well as certain station apparatus which it is possible to use for some time in connection with the new equipment now being installed.

The small supplies and materials on hand could only be appraised at a price which might be realized in the open market, same having no operating value.

The total price of \$33,016 we believe fairly represents the value of all property known as the Sayville station of the Atlantic Communication Co.

Respectfully submitted.

C. W. WALLER.

Senator REED of Pennsylvania. Senator Sutherland, as far as you know or have been able to learn from your experience in the Alien Property Custodian's office, is it a fact that the merchants of Germany, residing here at the outbreak of the war, were allowed to remain at least nine months to collect their debts and settle their affairs, and were permitted to depart freely, carrying off all their effects without molestation?

Mr. SUTHERLAND. So far as I know, that is true.

Senator REED of Pennsylvania. You find nothing in the Alien Property Custodian's office that indicates that that principle, if it was a principle, was disregarded?

Mr. SUTHERLAND. No.

Senator REED of Pennsylvania. Have you found anything, or has anything come to your attention to indicate that women and children, scholars, cultivators of the earth, manufacturers and fishermen unarmed and inhabiting unfortified towns, villages, and places, and in general all those whose occupations were for the common subsistence and benefit of mankind, were allowed to continue their respective employments and were not molested in their persons, nor were their houses or goods burned or otherwise destroyed, nor their fields wasted by the armed forces of the United States, is that so?

Mr. SUTHERLAND. I have no special knowledge on that subject, except by what is known by everyone in this country practically, but that is absolutely true.

Senator REED of Pennsylvania. Of course what I am reading from is a paraphrase of the treaty with Prussia which was claimed to be in effect at the time war was declared. So far as you know that class of people were compensated for land or property taken in the United States in the course of war for military use?

Mr. SUTHERLAND. Yes.

Senator JONES of New Mexico. Let us put in that provision of the Prussian treaty at this point.

Senator REED of Pennsylvania. It was a treaty originally made, I believe, in 1784 and renewed at various times down to March, 1829, and that treaty was believed to be in effect at the time war was declared. You will find a history of the treaties and the text of them to some extent set forth in Senate Document 181 of this session, which I presented and had printed December 22 last.

The CHAIRMAN. In Senate Document 182 you will find that that was in relation to the resolution affecting the administration of the office of the Alien Property Custodian, and in part 11 you will find reference to patents, trade-marks, and copyrights. It was made, I think, by Comptroller General McCarl; and I think the most of the information we have asked for as to values and where they went is included in this report.

Senator JONES of New Mexico. Senate Document 182?

The CHAIRMAN. Yes.

Senator JONES of New Mexico. Will the clerk of the committee get me a copy of that document?

The CHAIRMAN. You will find it beginning at page 87.

Senator HARRISON. Let me ask Senator Sutherland, before we adjourn, a question: There was some controversy mentioned on yesterday between the German Government and some one in regard to property in the hands of the custodian. Some question was raised by Mr. Carlin, who was somewhat fearful that under the provisions of this act some judgment obtained in the Supreme Court might be interfered with, in which some corporation in which the German Government owned 98 per cent of the stock, and which since has been liquidated, and the German Government then owning all of it, that the party recovering judgment might not be able to collect under the provisions of this bill. Will you state what the policy of your office would be in reference to it—whether or not, if there is any ambiguity in the language as to that claim to be collected, you would object to it being clarified?

Mr. SUTHERLAND. There is only one claim pending now on the part of the German Government, and that is under the terms of a will by which the German Government was made trustee for some heirs. This was an American citizen who left heirs in Germany, and the German Government put in a claim through the ambassador here. A claim such as you mention would take the ordinary course, and unless it was specifically provided for in the law, of course it would not be allowed. But I am not familiar with the particular judgment to which you refer.

Senator HARRISON. It would seem to me if the language is ambiguous with reference to it, that claim, which has gone to the courts and filed in the Mixed Claims Commission, it ought to be so clarified as that it might be paid.

The CHAIRMAN. Have they any defined position?

Senator HARRISON. Oh, yes.

Mr. SUTHERLAND. We would inquire as to the ownership of the corporation, and if the ownership of the corporation was in the German Government it would be treated as other German Government property and not returned. We would not return it.

Mr. ALVORD. Claims against the German Government would be paid out of the interest of the German Government in the corporation?

Mr. SUTHERLAND. It would be held as the property of the German Government, and would be subject to payments due from property of the German Government. That would be one of the sums out of which our Government could recoup itself for its claims.

The CHAIRMAN. On ships, etc.?

Mr. SUTHERLAND. Yes. We still have about \$5,000,000 of undisclosed property, which may or may not belong to the German Government or to the former reigning family of Germany. Eventually, of course, that will probably be disclosed, or if not we will continue to hold it.

The CHAIRMAN. Do you hold the property itself or the money?

Mr. SUTHERLAND. We hold it, whether in shape of money or property. If it is in the shape of money, we put that in the Treasury, and if in the shape of property it is held by us.

Mr. ALVORD. All claims pending in your office would be paid out of these funds as to German Government property?

Mr. SUTHERLAND. Yes; and there are some claims pending, quite a number of them.

Mr. ALVORD. They would have relief under subsection (e) of section 9.

Mr. SUTHERLAND. Under the general act.

Senator JONES of New Mexico. By what authority does the Alien Property Custodian make the assets of the German Government available for individual claimants through court proceedings? Why has not that property been seized under the trading with the enemy act, and why has not title become vested in the Government of the United States or the Alien Property Custodian? And why should an individual claimant who may have a judgment against the German Government get a priority with respect to his claim?

Senator HARRISON. This particular claim, as I understand it, is one where the people entered suit against the Secretary of the Treasury and the Alien Property Custodian, alleging that it was a German corporation and that Germany owned 98 per cent of the stock and a judgment was acquired. The case went to the Supreme Court of the United States, as I understand it, and that court affirmed the judgment, and then they went into Germany and found that the concern was liquidated, that Germany bought up the other two shares of stock. Now, as I understand it, all of the funds of this corporation belong to the German Government and are in the hands of the Alien Property Custodian. What the parties holding the judgment are fearful of is that this act might preclude them from collecting it.

Mr. ALVORD. Under subsection (e), section 9, of the trading with the enemy act, any person who has a claim against a person with property in the hands of the Alien Property Custodian, may, if the debt is described in that subsection, get it paid by the Alien Property Custodian.

Senator JONES of New Mexico. Oh!

Mr. ALVORD. It was under that provision that the Supreme Court held against the contention of the United States and that the individuals had priority over the United States.

Senator HARRISON. These people do not want to be precluded by a law that will be passed here that any residue should go to the United States Government instead of paying their judgment.

Senator JONES of New Mexico. I am sure that no member of the committee will want to do that if provision has been made for it in the existing law.

Mr. SUTHERLAND. I will be glad to make further inquiry about that.

The CHAIRMAN. If there is no other business this morning the committee will stand adjourned until Monday morning at 10 o'clock.

(Whereupon, at 12 m., the committee was adjourned until Monday, January 17, 1927, at 10 o'clock a. m.)

RETURN OF ALIEN PROPERTY

MONDAY, JANUARY 17, 1927

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

The committee met, pursuant to adjournment on Friday, January 14, 1927, at 10 o'clock a. m., in room 312, Senate Office Building, Senator Reed Smoot (chairman) presiding.

Present: Senators Smoot (chairman), McLean, Reed of Pennsylvania, Shortridge, Edge, Jones of New Mexico, Gerry, Harrison, Bayard, and George.

Present also: Hon. Garrard B. Winston, Undersecretary (in charge of fiscal offices), Department of the Treasury, and Hon. Howard Sutherland, Alien Property Custodian.

The CHAIRMAN. If the committee will come to order, we will proceed with the hearings. Senator George, you advised me this morning that there was an attorney that you desired to be heard.

Senator GEORGE. Mr. Escher, of New York.

The CHAIRMAN. Will you make your statement?

STATEMENT OF HENRY ESCHER, ESQ., NEW YORK, REPRESENTING THE INTERNATIONAL FOOD PRODUCTS CO. AND THE SWISS NATIONAL INSURANCE CO.

Mr. ESCHER. Mr. Chairman and gentlemen of the committee, I appear before you on behalf of an amendment that will have for its effect to correct what would seem to be an oversight in the treatment of alien property, and that is that the bill as drawn at the present time does not provide for the return of neutral money as such to neutral corporations. There was an amendment in May, 1926, for neutral individuals, but not for neutral corporations. The situation is a comparatively simple one. There are only a few neutral corporations in the position of the ones which I represent and on whose behalf we ask this amendment.

The CHAIRMAN. What are the names of the corporations?

Mr. ESCHER. The two that I have in mind, sir, are the International Food Products Co. —

The CHAIRMAN. Located where?

Mr. ESCHER. Located in Switzerland, with a branch office in New York; and the Swiss National Insurance Co., located also in Switzerland, with a branch in Zurich, in Switzerland, and a branch, I think, in the United States. Money of those two corporations was seized and sequestered on the theory that they were doing business in enemy territory.

If I might digress I shall try to be very short. The situation is, as I say, a comparatively simple one. A neutral corporation under the statute is regarded as an enemy corporation if it did business within enemy territory. These two corporations that I have in mind, and possibly there are others, find themselves in that position. They are incorporated within neutral territory; there is no question about that. And the United States Supreme Court has held on the appeal of the International Food Products Co. that the question as to who are the stockholders is not to be considered. That is to say, a neutral corporation is neutral regardless of the nationality of its stockholders. You gentlemen, those of you who are lawyers, will understand, of course, that that is the only reasonable working rule, and that to go behind the corporate entity and say that this is a Swiss corporation in name but German in fact would lead to infinite complications and would get us nowhere.

Senator REED of Pennsylvania. And yet that is what was done.

The CHAIRMAN. Yes.

Mr. ESCHER. Originally, sir, yes. So I would like to call your attention in the case of the corporation which I represent particularly, this International Food Products Co., that it was incorporated in 1913 in pursuance of an agreement that had been made in 1912, consequently there is no question, of course, of the bona fides of the transaction.

The CHAIRMAN. Who owned the stock?

Mr. ESCHER. The stock was owned at the time of the seizure 17.15 per cent by neutrals, and the rest by enemies, some 82 per cent by enemies.

The CHAIRMAN. And they did business in Germany, I suppose?

Mr. ESCHER. That, sir, is a question of law which is at the present time pending. We have contended that we never did business in Germany, but the Attorney General says that because we were a holding company and owned the stock, in some instances all the stock, of German corporations, that that constituted doing business with enemies—in Germany. And that is a point that has never been definitely decided. To-day I say, in answering the Senator's question, that there is no question but that the corporation was incorporated prior to the breaking out of the European war. But the seizure was not made upon that theory. The seizure was made upon the theory that four persons who had originally owned this enterprise were the owners of the stock, and that the corporation was merely a fraud or cloak for their operations. We satisfied the Alien Property Custodian that that view was wholly unjustified, and then later, after the Supreme Court had said that these corporations were not to be treated as enemy corporations, came this question of doing business.

Now, I certainly do not purpose asking the committee to go into that question of law. It is a complicated question. It would seem as if, for reasons which I shall touch upon very briefly, the fair thing to do would be to restore to neutral corporations their money regardless of whether they were considered as having done business in enemy territory or not.

Senator REED of Pennsylvania. Let me interrupt you so we may get the issue defined.

Mr. ESCHER. Surely, sir.

Senator REED of Pennsylvania. The amendment that appears on page 27 of the bill that is before us would appear to release to your clients immediately 80 per cent of the amount of its property now in the hands of the Alien Property Custodian; that is correct, is it not?

Mr. ESCHER. That is correct.

Senator REED of Pennsylvania. Your people are dissatisfied with that and want full 100 per cent?

Mr. ESCHER. Yes, sir. And may I add that while this is perhaps an ideal rather than a practical suggestion, that we particularly desire a clean bill of health. That is, we are extremely anxious not to come before Congress and say we will admit that we are enemies and we would like to receive our money back by virtue of the legislation giving it back to former enemies of the United States. We feel that we are neutrals and that we are entitled to take it on the theory that we are neutrals, and that under 9 (a) we had a right to it in the first instance. That is to say, we never were in the position where the property, though I will concede it was properly sequestered, should have been held. We were not in a position where it should have been held. I do not want to take up the questions of law.

Senator HARRISON. How much would it amount to now if these neutral corporations got the 100 per cent instead of the 80 per cent now?

Mr. ESCHER. I am told—I know that in Swiss hands there is about \$1,000,000 involved. That is to say, these two corporations that I know of particularly, one of whom I represent, have had sequestered about \$1,000,000. My best information is that Dutch money and possibly some Swedish money and some Spanish money would reach another \$1,000,000, so the total amount involved would be two-fifths of \$2,000,000. There is not a very great sum, but we think there is a very serious principle involved. And in that connection I would like to call the committee's attention to the fact that it would seem to be very desirable to establish a precedent here to the effect that private property will not be held, at least under these circumstances.

Adverting very briefly—

Senator REED of Pennsylvania. I am going to ask you to pardon me again, because I thought I stated your attitude, but I would like to have your answer to this. If you amend section 9 of the trading with the enemy act, as is provided on page 27, we find that section 9 (b) of the trading with the enemy act provides for the absolute return, without retaining any percentage, to certain persons that are mentioned in 11 different subsections. We now would add 3 additional subsections to that, and No. 13 would cover the case of your client. Why does not the bill as it stands amply take care of your corporations?

Mr. ESCHER. Because the bill, sir, in line 13 at page 27, provides that the consent provided for in subsection (m) has been filed as an accommodation precedent to receiving back your money, which means that we would get 80 per cent instead of 100 per cent.

Senator REED of Pennsylvania. I see.

Mr. ESCHER. That is the theory of it. In other words, may I suggest, these amendments as drawn completely satisfy the case of the return of German money, but I think that I am not incorrect

in saying that Swiss money, neutral money, has nowhere been considered in this statute. We have taken that up with the Department of Justice, and I understand that some there have expressed themselves to the effect that they did not want to do it. That they thought that the neutrals, so far as the neutrals were not enemies, would get their property anyway, because, of course, the statute provides for a suit at law, and so far as they were technically enemies they had better take what they could get and be satisfied with that. And we do not choose to accept that position. We very respectfully protest before you gentlemen to the effect that if we are neutrals, that the history of the law, the law itself, and justice and morals require that this property should be refunded, not as a matter of grace but as a matter of right.

The CHAIRMAN. Do you think that it is morally right that if German nationals own 83 per cent of all the stock of the Swiss company that they ought to be paid 100 per cent, and the American claimants can wait for theirs, German claimants getting 80 per cent? Do you think that that is morally right? I am not speaking of the law now, I am speaking of the moral question.

Mr. ESCHER. I understand your position. If I may answer your question, Senator, by giving you the facts of these two cases, you will see what I meant when I said that it was not feasible to go through the corporation organization. I will answer your question in just a moment. In the case of the Swiss National Insurance Co. I understand that 50 per cent, roughly speaking, of the stock is nonenemy held. In the case that I speak of 17.15 per cent only is nonenemy held. In our case there is a bond issue, 50 per cent of which is in the hands of neutrals. The corporation's stock was very gravely impaired about 1920, so that they wrote off something like 96,000,000 Swiss francs. Call it \$12,000,000 or \$13,000,000. It is the bondholders at the present time who have the real first lien on this money.

While that does not answer your question, the academic question, as to whether or not if 83 per cent or 82 per cent are Germans, whether those Germans should have their money, it does show the difficulty of inquiring into that question, and I submit that it shows that more injustice will be done by not returning the money than by returning it, because the stockholders are going to lose it. Besides, the stockholders are not going to get this money. This corporation keeps this money as part of its capital stock, and there is nothing to indicate that it is going to be distributed to the Germans. It is going to be kept in the treasury of the corporation where it is going to do business, among other things, in neutral countries, because 45 per cents of the stock of this corporation is invested in neutral countries.

Now, with your permission I would like to say one word as to the motives which underlie this discussion here. The question is not a new one, this question of who is a neutral corporation and who is not is not a new question. It arose at a time when the trading with the enemy act was enacted in 1917. The bill in those days was in charge of Assistant Attorney General Warren, and the question arose before the committee of the Senate as to what that meant; as to whether or not a neutral who had for instance, relations with an enemy country would be regarded as an enemy—I am speaking of corporations—and would be apt to lose

his money. And they asked Mr. Warren, the Assistant Attorney General, about that question and he said that "doing business" is a very well recognized phrase and has a clearly defined legal meaning. Doing business within Germany is, of course, different from doing business with a German citizen."

Senator Vardman asked him, "What do you think about it?" and he said, "Personally, I say we use the words 'doing business' because those words have been given a definite meaning by our Supreme Court, and I am surprised to find that anybody misunderstood them."

And then he goes on to say that "doing business" means having an office within an enemy territory.

The CHAIRMAN. Well, do you take that ground, that if I send a sample out from America to a firm in South America and I have no office in South America, that I am not dealing then with a foreign country? I do not say enemy now, I say with a foreign country.

Mr. ESCHER. No; we think that beyond any question you are.

The CHAIRMAN. Yes.

Mr. ESCHER. But we think that the statute using the words "doing business within enemy territory" had a perfectly definite meaning. The Commerce Committee reporting it out said:

"Doing business within Germany," of course, means having a branch or agency actively conducting business within that country. The bill does not bring within the term "enemy" a neutral unless such neutral has a branch of its business within Germany.

The CHAIRMAN. In other words, they could do business just across the line outside of Germany, no matter whether north, south, east, or west; they could carry on a business there and furnish Germany with anything that Germany may want to purchase that they carry, and then they would not be doing business within an alien country?

Mr. ESCHER. That is correct. May I say this in answer to this question, gentlemen: This whole discussion, gentlemen of the committee, is founded upon what seems to me a very serious misapprehension. Switzerland is a country of about 4,000,000 inhabitants. It has no raw materials, and it could not do enough business within the confines of the Swiss Confederation in a year to support one of its national banks. I mean by that that the great majority of the business of the corporation is entirely outside of the limits of the confederation. Now, may I not suggest that, that being the case, it is natural—in fact, it is inevitable—that Switzerland should do business with its neighbors; and I am frank to say that, as a loyal American citizen, I was shocked when the Attorney General first put the suggestion before me—when it was first suggested that we had done any wrong because we had done business with Germany. In the first place, it would mean economic ruin. Of course, Switzerland would have gone to pieces in a week if she had not done business with her neighbors, because she did not have any food, let alone any money. But the thought that there should be any objection to the Swiss doing business with Germany during the war seems to me to be wrong.

The CHAIRMAN. What articles did the companies that you represent furnish Germany?

Mr. ESCHER. The Swiss National Insurance Co. is an insurance company, and the International Food Products Co. was a manufacturer of chickory, which is a coffee substitute. It is a food product, and indirectly, of course, went to assist the enemy. There were no munitions or anything of that sort. Neither as I understand it was the slightest charge made against any of these corporations that they were guilty of any disloyal act against the United States. They found themselves on the south of the Rhine, and Germany was on the north of the Rhine. They had done business for a hundred years—for a thousand years when they were not fighting with each other, and of course under the circumstances they continued to do business. And later when the Allies furnished food, and the United States were in the front ranks in doing that, the stipulation was made that as in Holland, the S. S. S., the Société de Surveillance Economique (Suisse), was incorporated, which society had the duty of seeing to it that imports into Switzerland into neutral countries were not diverted into Germany, except with the consent of the Allies, and under those circumstances it would seem that the Swiss corporations were neutral. Now, if the statute says that they were not neutral by reason of the fact that they did business within enemy territories, and we did considerable reinsurance in those countries, we come to this committee and ask that it be good enough to change the law so that that situation no longer exists, and they may get back their money.

May I make this suggestion. There was one forcible argument in favor of the law and of the seizures, and that was the fact that a Swiss corporation, like these two, like any others functioning in Switzerland, having a source of revenue in the United States, could not be reached and could not be prevented by the United States from transmitting that money into enemy hands. And that being the case we took the position from the beginning that the United States was well within its rights in seizing, not because there was any warrant in international law for such a practice, but simply by reason of the fact that the statute was passed to cripple the enemy, and that if it had not been done eventually it would not have been possible to prevent American money from getting into Germany through Switzerland. There was no charge of moral turpitude against these corporations.

As I understand it, this sequestration is in no sense of the word a penalty. It was a war measure, and as long as the war was on we had no complaint to make. But now the war has been over for eight years, and yet there is no effort to restore this property. The theory seems to be that you did something that should not be done and under the circumstances you are not going to get your property back, or if you get it back you are going to get it back as a matter of grace by act of Congress.

Senator BAYARD. Were there any other similar circumstances by which the representatives or any of the officials of any of the allied governments took over similar property of the Swiss corporations?

Mr. ESCHER. I have no knowledge of any such case, and I do not think it occurred. I have investigated the question somewhat, and I am told that there were hundreds of Swiss corporations doing business in all the countries of the world, including the United

States, and with the exception of these two or three, none of them were sequestered.

Senator BAYARD. And whose individual securities were held pro tanto, as these were, by a majority of German nationals?

Mr. ESCHER. That I would not care to say, Senator, that I do not know, but I think surely there must have been, because there was a great deal of German capital invested in Switzerland. I may add that the Swiss have changed their corporation laws since the war ceased to prevent that. They are the first to object to the majority control by Germans, of corporations.

Senator BAYARD. Such corporations as those that you represent would unquestionably have come in contact with England, France, and Italy, and I thought some question might well have arisen after the declaration of war by those countries against Germany.

Mr. ESCHER. Must have arisen.

Senator BAYARD. Must have arisen. But you know of no instance in regard to the settlement of those claims as to what was done by the official representatives of those countries in regard to the German interests in those corporations?

Mr. ESCHER. No, I do not know; and as I say, I have not in mind any instance where England, for instance, had such a case—I think England would have done it, because her act was very similar to ours, but I have no case like that in mind where such a case happened.

Senator HARRISON. Did you present this matter to the Ways and Means Committee of the House?

Mr. ESCHER. It was presented. I do not think it was formally presented. We saw Mr. Green on several occasions and spoke with some of the other members, and for some reason the Ways and Means Committee felt that they did not want to put the amendment in at that time. We offered an amendment to them, but they did not put it in.

Senator HARRISON. They did not accept your argument, then?

Mr. ESCHER. I do not know, I am sure. We did not appear personally before them.

Senator REED of Pennsylvania. I think you are wrong about these two corporations being the only two corporations that are in this position. The Alien Property Custodian tells me there are others. The American Metals Co. is one of them. And I understood from other sources that there are several corporations in the same predicament, Swiss corporations.

Mr. ESCHER. That, of course, may very well be. I think I may say that there are no other cases in the courts, because those I have followed. I have no means of judging that there are, but the minister of Switzerland told me on Saturday night that so far as he knew there were no other Swiss corporations. The American Metals case depends, as I understand it, on a question of title, and is a different question from this one. And there may be other neutral corporations, but not many Swiss ones.

Senator REED of Pennsylvania. You say the Swiss minister told you that these two were the only two?

Mr. ESCHER. That he had any knowledge of.

Senator REED of Pennsylvania. That he knew of?

Mr. ESCHER. That he knew of, or that had been brought to the attention of the legislature, involving this question.

In final word may I say, then, that our position is that the statute as it stood was proper and protected the interests of this Government up to the close of the war. That since that time there does not seem to be any justification for holding this money. That we should like to get it back as neutrals, and not as enemies. And that we think that a simple amendment—it has already been submitted, as I understand it—a simple amendment providing that a corporation organized or incorporated within any country other than Germany, etc., if that were added to the list of those persons entitled now to get back their money, would be sufficient to cover our case.

Senator REED of Pennsylvania. What is the amount of the property held by the Alien Property Custodian belonging to these two corporations?

Mr. ESCHER. About eleven hundred thousand dollars. And I am told that the total money that is involved in claims similar to this on behalf of all neutrals is less than \$2,000,000, so far as anybody knows. I think the Alien Property Custodian would be the only one could give you official information.

There is also, gentlemen, a treaty, 1850, with the Swiss Government, which contains a most-favored-nation clause, and which we think ought to be considered in connection with this question, as it seems that the provisions of that treaty have been—I would not say violated, but have not been observed, and if you gentlemen desire any further information of course I will be very happy to give it to you. I have all the facts here.

I thank you much for listening to me as patiently as you have, and I trust that you will see your way clear to put that in.

Senator EDGE. Did I understand the amendment was offered in the Senate?

The CHAIRMAN. Did you offer it, Senator George?

Senator GEORGE. No; I did not offer it. I have a copy of the amendment, and I understand that some one has offered it or expects to offer it.

The CHAIRMAN. This meeting was called this morning primarily for the purpose of hearing Colonel McMullen on patents. If Colonel McMullen will take the chair—

Senator JONES of New Mexico. It may be that the Alien Property Custodian can give us the information I had in mind.

STATEMENT OF LIEUT. COL. JOSEPH I. McMULLEN, JUDGE ADVOCATE, CHIEF OF THE WAR DEPARTMENT PATENT SECTION, AND SECRETARY OF THE INTERDEPARTMENTAL PATENTS BOARD

Senator JONES of New Mexico. What is that board?

Colonel McMULLEN. That is a board set up by Executive order of the President in 1922 for the coordination of the patent activities of the whole Government. The primary purpose was to get together in one office all the patents owned by or licensed to the Government, so that we could disseminate information to all departments of the Government, and they could use them without some department making the mistake of making a contract to pay royalties on a patent that the Government owned or already had a license on.

Senator JONES of New Mexico. Let me see if I understand the situation: A number of patents taken over during the war were sold to a third party, I believe.

Colonel McMULLEN. Yes.

Senator JONES of New Mexico. And may we have the amount received by the Government, I mean received by any one for those patents which were sold, if you have that information?

Colonel McMULLEN. No, sir; I have not that information. I think the Alien Property Custodian has it.

Senator JONES of New Mexico. Have you that information, Senator Sutherland?

Mr. SUTHERLAND. Yes; I have a statement showing the royalties received—

Senator JONES of New Mexico (interposing). No; as to the amount received for patents which were sold?

Senator EDGE. Do you mean that were sold outright?

Senator JONES of New Mexico. Yes.

Mr. SUTHERLAND. I have here a statement which gives the amount received for all patents sold, all persons to whom sold, and the dates and whether it was a patent, a trade-mark, or what.

Senator JONES of New Mexico. Is that a voluminous document?

Mr. SUTHERLAND. No.

Senator JONES of New Mexico. What do the totals show, as to the number of patents sold and the amounts received?

Mr. SUTHERLAND. The amounts received are not totaled up. It would take a machine to do that. But the amount is not very large. We sold some patents to the Chemical Foundation for \$250,000, and then some other patents to several parties for a total of \$313,000, and then some others to other parties for \$1,000,000. As to the others, the most of them are small amounts, not exceeding \$5,000.

Senator JONES of New Mexico. I think we better have that document put in the record. And I wish you would have the totals ascertained before you finally put the statement in the record.

Mr. SUTHERLAND. All right; I will do that.

(See p. 659 Transcript.)

The CHAIRMAN. In Mr. McCarl's report there is a total of \$1,370,000 received, with some little detail.

Senator JONES of New Mexico. I first want to get the amount we have received on account of sales.

The CHAIRMAN. It shows here \$1,370,000.

Senator JONES of New Mexico. And that included how many patents?

The CHAIRMAN. I do not know that it shows the total. Do you mean whether trade-marks, copyrights, or something else?

Senator JONES of New Mexico. Either one or both.

The CHAIRMAN. You will have to get it from the Alien Property Custodian because this report does not show that detail.

Senator JONES of New Mexico. I ran through that report very hurriedly, but I was unable to get the information.

Mr. SUTHERLAND. I will have it totaled up for the record.

Senator McLEAN. How were those sales negotiated? I mean, was there any competition?

Senator JONES of New Mexico. I understand that there was not, but I think it would be well to get that officially in the record, as to how the sales were consummated.

The CHAIRMAN. Do you know, Colonel McMullen?

Colonel McMULLEN. Yes, sir; they were practically all made under private negotiations.

Senator MCLEAN. As to the question of their real value, was that known or estimated at the time of sale?

Colonel McMULLEN. Well, in some instances it was, of course, but in other instances they just, I think, placed a more or less arbitrary value on them.

The CHAIRMAN. It was a case something like this: That they knew as to one patent it was worth the amount they paid, and if they got anything in addition they were that much ahead.

Colonel McMULLEN. That is true in a group of patents.

Senator JONES of New Mexico. None of those were sold to the Government direct.

Colonel McMULLEN. Yes, sir; there were 187 patents and what they call contracts sold to the Government direct, for which we paid in some instances only a nominal consideration, \$1 per patent.

Senator JONES of New Mexico. But were they actually sold to the Government?

Colonel McMULLEN. Oh, yes; and some of them are very important patents.

Senator REED of Pennsylvania. Such as what?

Colonel McMULLEN. Radio is the one outstanding patent among the group, covering a hard filament for radio tubes. At that time it was not worth much because it was quite some years ahead of the art, but now the hard-filament radio tube is what is called the cat's whiskers in the art in the matter of radio tubes. And, by the way, those were applications for patents only, and the patents have not yet been issued. There has been quite an interference in the Patent Office, and also litigation.

Senator REED of Pennsylvania. Were they actually used during the war?

Colonel McMULLEN. No; but they were applications that the War and Navy Departments joined in buying.

Senator JONES of New Mexico. Are they in use yet?

Colonel McMULLEN. Oh, yes; everybody is using them. They found the hard filament of the greatest benefit in radio broadcasting tubes and also for use in reception tubes. They were found very much more satisfactory than the soft filament.

Senator JONES of New Mexico. Is the Government granting to any other people the right to use that patent?

Colonel McMULLEN. Those patents were purchased through the War and Navy Departments, but in the name of the Secretary of the Navy. I understand that the Navy Department has granted, under the authority of an opinion by the Attorney General, what you might call a cross license agreement with the International Radio and Telegraph Co., the right to use their patents, in consideration of their granting to us the right to use their patents. The agreement was revocable, was a revocable nonexclusive license, just merely a license for a use that could be revoked at any time.

Senator EDGE. Then we do not receive any remuneration for that use?

Colonel McMULLEN. We receive remuneration in the way of use of their patents.

Senator EDGE. But so far as those valuable patents are concerned that we hold through seizure, we have never in any way received any income from them.

Colonel McMULLEN. No; because we have no authority of law to license the use of them other than under a revocable license, and you realize that nobody is willing to pay much money for a revocable license.

Senator EDGE. I was just asking for information as I did not know our policy on that matter.

Senator JONES of New Mexico. Is it necessary for the Government to retain title to that patent if it should be issued?

Colonel McMULLEN. It would be highly desirable; yes, sir.

Senator JONES of New Mexico. To the exclusion of all private manufacturers?

Colonel McMULLEN. Well, we either ought to have title or a license, because both the Navy Department and the War Department, that is, the Signal Corps of the War Department, and the United States Shipping Board use these patents, of course, very extensively now. We have a regular system operated by the Signal Corps at great profit to the Government, and, of course, the Navy use them very extensively in all their operations.

Senator JONES of New Mexico. You say "at great profit to the Government"; in what respect do you mean?

Colonel McMULLEN. In the saving of telegraph costs. You see it costs very little to transmit messages by radio with our system, and so we send all the business possible over our radio system instead of by telegraph, and, of course, we have to pay telegraph tolls when we send messages by telegraph.

Senator MCLEAN. Would the ownership of these patents by the Government be helpful in event of the enactment of legislation controlling them?

Colonel McMULLEN. Oh, very much. Control of a group of radio patents that way would be very helpful in forcing the industry to treat the Government right. We have used them to some extent already in that way.

Senator JONES of New Mexico. Do you manufacture your own apparatus or appliances?

Colonel McMULLEN. Well, we have done so at times under special authority of Congress; that is, we have carried on certain research work and then made contracts for the actual production. We have done experimental and design work, you might say, in broadcasting tubes because we could not get satisfactory bids for broadcasting tubes because of adverse interests of patentees. There are a good many patentees in radio who claim the right to certain things that are in litigation, and it puts the Government up a tree in its desire to furnish radio tubes to the Shipping Board. For instance, under the De Forest patents they would not sell broadcasting tubes for use for commercial purposes, and under our system—I mean the War Department system—we handle commercial business from outlying

places like Alaska, Hawaii, and other distant points, and we could not agree to the terms of the contract that we would not use tubes for commercial purposes. Furthermore, the War and Navy Departments furnish the United States Shipping Board all their transmitting tubes, which are used almost exclusively for commercial purposes. So we had to go out into the field and develop our own tubes and take the chance of being sued on the patents, and we have not been up to date.

Senator McLEAN. Is your contract of such a reciprocal nature by which you could estimate the actual value of these patents, supposing that they were in possession of owners who could demand a royalty or annual income from their use?

Colonel McMULLEN. There is no rule of thumb method for valuating any patent, but the Supreme Court of the United States and the Federal courts, as well as the Court of Claims, have adopted a system that where there is no possible means of fixing the actual damage in patent cases and where a patent is a pioneer patent in an art, that the royalty is worth about 20 per cent of what it cost to manufacture the article, whatever it may happen to be. And where it is a very small improvement on a patent, involving a small contribution to the art, they have decided that it is worth less than 1 per cent of the manufacturing cost. So that, you have a range of value of from 1 per cent to 20 per cent where you have no method of arriving at the actual damage to the patentee. You simply apply the rule that I have mentioned. That is what the courts have done.

Senator JONES of New Mexico. Have you attempted to apply it in making any estimate of value?

Colonel McMULLEN. Oh, yes. That is how I arrived at an estimate of the value of these patents to the Government, by applying that rule. And that is the only possible rule that could be applied in this case, because the German owners could never fix any actual damage. We would not admit it, anyway.

Senator EDGE. Twenty per cent royalty on the series of radio patents that you speak of, now in general use, would be a very large sum.

Colonel McMULLEN. We do not admit that that is a pioneer patent. It is valuable, but we do not admit it to be a pioneer patent and therefore entitled to 20 per cent. As a matter of fact, there is not a patent in the whole group that is entitled to the 20 per cent. The most outstanding patent in the group of patents we will have to adjudicate are the Diesel engine patents, but they are by no means pioneer patents. The pioneer patents, in the most of these arts, have long since passed to the public. These are all improvement patents; I do not know of a single pioneer patent, with one exception, in the whole group.

Senator JONES of New Mexico. That is, of all the patents that the Government purchased.

Colonel McMULLEN. Yes; either purchased or used.

The CHAIRMAN. What is that particular patent?

Colonel McMULLEN. That is the salvarsan patent, which will expire in about one year more, and it is invalid. I am merely talking about the assumption of a 20 per cent royalty on a pioneer patent when it is valid. A great many of these German patents are on their face invalid.

Senator McLEAN. How do you estimate the value of a patent like salvarsan?

Colonel McMULLEN. This is a pioneer patent if it were valid—

Senator McLEAN (interposing). We will assume that it is not valid, and then what is it worth?

Colonel McMULLEN. It is not worth a cent.

Senator McLEAN. The courts have so decided?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Are you now making an inquiry as to the value of these patents, Mr. Chairman?

The CHAIRMAN. Of the Government patents.

Senator SHORTRIDGE. The value of the patents taken over.

The CHAIRMAN. Of the 187 patents purchased by the Government.

Senator JONES of New Mexico. The real purpose of my original question was not only to ascertain the amount for which these patents were turned over to the Government, and the value to the Government of the patents, but also to ascertain the advisability of owning the entire patent under these various articles which the Government is actually using. May I ask whether or not it is true that the Government should control absolutely these patents, the entire patent, or merely the right to the use of a great many of these patents for its own purposes?

Colonel McMULLEN. In general what we call the nonexclusive right to use is sufficient for the Government. There are exceptions to that rule and where the Government ought to absolutely control the patents. I think that is true with respect to these Salversan patents for example. There are a lot of these alkaloidal patents and pharmaceutical patents that the Government ought to control. The reason is this: Take the drug patents, many of these drugs which are used as specifics, for many diseases other than Salversan, oxidize when they are exposed to the air and become dangerous to health. Therefore they ought to be produced only under the most careful supervision of the Government, just as anything else that affects the public health. And that is what we are doing to-day; we are supervising the production to-day of quite a number of drugs.

Senator JONES of New Mexico. For general consumption by the public?

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. On the same theory if we have to have alcohol in any form as a medicine, which is considered dangerous to the public, you think that ought to be produced by the Government also?

Colonel McMULLEN. Well, I have never considered it dangerous to my health anyway.

Senator JONES of New Mexico. The eighteenth amendment of the Constitution would rather indicate that that was the public mind on the subject just now. So the illustration is not a theory but is to the point it seems to me.

Senator JONES of New Mexico. For the record: The Government itself took over directly a large number of patents or bought outright a large number of patents, and what was the amount of the purchase price for those patents?

Colonel McMULLEN. Well, we bought outright only 187 patents, and I should say all we paid for those 187 patents was \$187. My

recollection is that we only paid a nominal consideration for the patents we purchased. But we took a nonexclusive license from the Alien Property Custodian for 5,850 patents, in which the Navy and War Departments joined, and paid \$100,000 for the license.

Senator JONES of New Mexico. Well, is that \$100,000 per annum?

Colonel McMULLEN. No; it is a lump sum.

Senator JONES of New Mexico. That is a nonexclusive license?

Colonel McMULLEN. Yes.

Senator JONES of New Mexico. And there were 187 patents where we took over the entire title?

Colonel McMULLEN. Right, title and interest, yes, sir.

Senator JONES of New Mexico. Are those 187 patents all of the same general character, I mean as to the necessity of their exclusive use by the Government?

Colonel McMULLEN. No, sir; I do not think so.

Senator JONES of New Mexico. Well, to what extent might we differentiate?

Colonel McMULLEN. Well of course you take the engine patents and I think, if I recollect correctly, the ordnance patents, there isn't any reason why we should have an exclusive right. I do not know why, of course, they took the exclusive title to the patents in some instances. The reason we took the exclusive right and title to the radio patents was that we wanted to get a group of patents to protect the Government.

Senator JONES of New Mexico. But even in those cases we do not need the exclusive right, do we?

Colonel McMULLEN. No; we do not need it except that it will be a good club in the hands of the Government to make the industry treat the Government right. That is from our point of view.

Senator JONES of New Mexico. Well, are any of these patents old with respect to the patent law, for the value of the patent?

Colonel McMULLEN. Old in the art, do you mean?

Senator JONES of New Mexico. Yes, old in the Patent Office.

Colonel McMULLEN. Oh, yes. I should say practically 50 per cent of all these patents have now expired. I have the exact figures on it.

The CHAIRMAN. That is of the 187 patents?

Colonel McMULLEN. No, I mean all of them. The total patents I have the figures.

Senator JONES of New Mexico. Would that include the 187 also?

Colonel McMULLEN. Yes. I have the exact figures on all of those.

Senator JONES of New Mexico. Well, I would like to have that put into the record. I would like to know to what extent the patents have now expired.

Senator McLEAN. Well, what is the Government going to do at the end of the 17 years with the patents which they should control exclusively?

Senator JONES of New Mexico. They can not do anything.

Colonel McMULLEN. They can not do anything.

Senator JONES of New Mexico. And it seems to me that your question involves a very important feature of this whole matter.

Senator McLEAN. I think so.

Senator JONES of New Mexico. That we should bear in mind that our exclusiveness in any event will only be for a limited period, and if we could not have the exclusive right after the period it is rather

difficult to see why we should have the exclusive right during the period.

Senator McLEAN. I suppose ultimately we have got to rely upon the interstate commerce clause of the Constitution to control the radio and other things that affect interstate commerce.

Senator JONES of New Mexico. Yes.

Colonel McMULLEN. Well, 102 of the 187 will have expired at the end of 1929. We fixed that date because we thought that that would be about the date that this thing would be cleared up. And of the others, those licensed to the United States, 4,244 out of the 5,850 will have expired at the end of 1929.

The CHAIRMAN. I suppose the same will apply to the 6,000 that were purchased by the Chemical Foundation?

Colonel McMULLEN. Well, I have that, too. Three thousand and eighty-six of those will have expired at the end of 1929. And there are 5,055 of those patents, without duplications, under which we are licensed from the Chemical Foundation.

Senator JONES of New Mexico. Well, now then, let me see if I have this thing right. The Alien Property Custodian has sold to the public, or rather to a purchaser other than the United States, a large number of these patents, for which it has received a certain sum, somewhere between one and two millions of dollars. It sold to the United States outright patents numbering 187 for the consideration of \$1 each. Those are patents which the Government has assumed to retain the exclusive use of.

Colonel McMULLEN. Yes.

Senator JONES of New Mexico. It has not actually retained the exclusive use, but has sublet, we may say, the use to individuals in the United States.

Colonel McMULLEN. Or corporations. No individuals.

Senator JONES of New Mexico. Well, I mean corporations.

Colonel McMULLEN. Yes.

The CHAIRMAN. For Government purposes or for all purposes?

Colonel McMULLEN. For all purposes.

Senator JONES of New Mexico. Then, is there any way of estimating the value of those patents to the Government for governmental use only, and to release them for general use by the public? Is there any way to estimate the value of the use to the Government if it did not retain the entire use, but released to the owner the right to the use of the patent for all purposes, except governmental purposes?

Colonel McMULLEN. Yes; you could estimate that value.

Senator JONES of New Mexico. Could you establish a definite rule for that estimation?

Colonel McMULLEN. The rule I have already given; that is to say, we know what the Government's needs have been in the past, and we could estimate what they would be in the future, with respect to the life of the patent, and simply multiply that by the per cent which we would give to the patent as to its contribution to the art, whether it was a pioneer patent or an improved patent. Another consideration that the court gives is the quantity of production. If you produce a large quantity, of course the percentage of royalty goes down.

Senator McLEAN. Now to what extent is this question of the value of these patents involved in the pending legislation?

Senator JONES of New Mexico. Well, I have been seeking this information so that if possible we may devise some plan for handling this situation other than that contained in the House bill.

Colonel McMULLEN. Do you wish me to answer your question, Senator?

Senator McLEAN. Well, I did not know but what the witness might have some views on it.

Colonel McMULLEN. Well, I can say this. You can not fix any rule-of-thumb method that I know of, they never have been able to devise any, or arriving at the value of patents, I mean in general, or in groups, or the whole lot, because for the very reason that one patent may be a pioneer patent and the other one a very small improvement patent, and so you have got to apply all these rules to each patent, and then find out what the user is or has been or is expected to be, and apply the rules to each patent in particular. There is no other possible way of doing it.

Senator JONES of New Mexico. Well now, there are several thousand patents here, and if you were to try out each one, and in a controversial way involving the various points which you have discussed before the committee, when would we probably wind this thing up?

Colonel McMULLEN. I suggested to the Ways and Means Committee in the House I think the language is all right if the arbiter adopts what you might call an arbitrary way of handling the whole matter. You have got this proposition under the law as it now stands. You have got a license to the Government from the Chemical Foundation under 5,850 patents. Some of those patents are not worth 2 cents Mexican. Some of them are more less valuable. The majority of them are not worth much. I mean the license to the Government. The license runs to the Government for the life of the patents in each case in the 5,850 patents. The law provides that we shall pay for that license what we would have been willing to pay an American citizen if we had made a contract with him for license at the time we took the license. The only possible way of course you can arrive at the proposition is to analyze these patents, all of them, with the knowledge which we only have, I mean the Government, the War Department.

Senator JONES of New Mexico. To what law do you refer? You said that the law required that you should pay.

Colonel McMULLEN. Well, I am talking about the language in this proposed bill, as the language now is, and assuming that it becomes the law, that that defines the limits of what they can collect, and it says with regard to the paying for the licenses and paying for the value of the patents which we took outright that it shall be a price which we would have been willing to pay an American citizen under the same circumstances if we had negotiated the matter with him.

Senator JONES of New Mexico. Well now, who can determine what the Government would have been willing to pay to a private citizen under the circumstances?

Colonel McMULLEN. I think that is not so difficult, for this reason. We do that right along. If we would go out to an American citi-

zen who had a patent and wanted to negotiate a license, and he was willing—this is on the assumption that the American citizen would be in the position of being willing to grant a license for a reasonable price—why we would take into consideration first from our side, from the Government side, the contribution of the patent to the art. That is to say, whether it belonged down in there where we would pay 1 per cent on the cost of what we manufactured, for instance, or 2 per cent, or 5 per cent, or 20 per cent. We would take first into consideration, as I say, the contribution of the patent to the art. Then we would put down what our production had been in that field in the past, I mean in money value, and estimate what we would produce in the future for the life of that patent, and simply take that and total it up and multiply it by the per cent. If it is 1 per cent that would be the value of the license to the Government.

Senator JONES of New Mexico. Well, I should expect one connected with the purchasing branch of the Government could determine that sort of thing.

Colonel McMULLEN. Oh, well, the purchasing branch of the Government could not determine it. It has got to be somebody who is qualified in patent law and the general practice of the courts.

Senator McLEAN. Well, has the arbiter or the Mixed Claims Commission been called upon up to date to adjust any unliquidated claims like the value of these patents?

Colonel McMULLEN. I spoke to Mr. Bonynge about that, and he said they had a few patent cases that they had not attacked yet. Most of them are afraid of patent cases. They are very difficult. Always have been.

Senator McLEAN. Well, there must be unliquidated claims presented to this arbiter.

Colonel McMULLEN. Oh, yes.

Senator McLEAN. What as to fixing value?

Colonel McMULLEN. Well, when I spoke to Mr. Bonynge some time ago they had not yet.

Senator McLEAN. No; but other than patents, and if these patent claims come to him he will have to fix the value, will he not?

Colonel McMULLEN. Oh, yes, yes.

Senator JONES of New Mexico. Well, now, Colonel, assuming that the Government of the United States had a right to use these patents or other property of aliens during the war, have these patentees suffered any injury by reason of what the Government has done in the matter?

Colonel McMULLEN. Oh, yes; there is no doubt about that. I know of a number of cases where they have. There is no doubt but what quite a few of them have suffered injury.

Senator JONES of New Mexico. Well, now, Colonel, eliminating wholly from our calculation any connection with the Chemical Foundation whatever, we acquired from the Alien Property Custodian certain patents.

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. They amount in number to 187, do they?

Colonel McMULLEN. Yes, sir; that is all right, title, and interest, and that includes what we call 18 contracts, which are the same things as patents.

Senator JONES of New Mexico. And for those we paid the Alien Property Custodian a dollar each?

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. Now, as to these other patents which the Alien Property Custodian held, he merely transferred to the Government a license?

Colonel McMULLEN. A nonexclusive license; yes, sir.

Senator JONES of New Mexico. A nonexclusive license. And for that we have paid \$100,000?

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. Then what does the Alien Property Custodian now hold with respect to these patents?

Colonel McMULLEN. Well, he holds the patents subject to those licenses and such other nonexclusive licenses as he has granted to other people.

Senator JONES of New Mexico. He has granted other nonexclusive licenses?

Colonel McMULLEN. In some instances; yes, sir.

Senator JONES of New Mexico. And do you know the amount of money he received for those licenses?

Colonel McMULLEN. No; I do not. I think he stated that the total sum was a million and something dollars sales in licenses. And then there are some licenses, of course, outstanding, issued by the Federal Trade Commission. But I do not know just what.

Senator McLEAN. Well, the duration of these license is for the life of the patent?

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. It seems rather difficult to get a statement here of what would occur to me to be important, and the fault may be with me rather than with the method of accounting and so on which has been kept up by the Alien Property Custodian. But what I want to get at is where the Alien Property Custodian has dealt with anybody outside of the Government of the United States itself, if we assume those transactions to be closed transactions, then I would like to get at an estimate of the value of what the Government has got from what was left.

Colonel McMULLEN. Well, that is the value that I have estimated at seven and a half million dollars.

Senator JONES of New Mexico. But you said a while ago that that seven and a half million dollars included the use of certain patents which were derived from the Chemical Foundation.

Colonel McMULLEN. No.

Senator JONES of New Mexico. Well then, I misunderstood you.

Colonel McMULLEN. No. I think, Senator, that I can probably make this clear to you by stating that you have these propositions. I am talking about this proposed law as it now stands, as this bill came from the House. You have the proposition of paying these former owners for the license which the United States has taken from the Alien Property Custodian, 5,850 patents, evaluate that license and pay them for it.

Senator JONES of New Mexico. Well then, that would go behind the transaction which has been made between the Alien Property Custodian and the Government whereby the Government paid to the Alien Property Custodian, \$100,000.

Colonel McMULLEN. Oh, yes; it does that. Of course, the bill provides under section 26, to return that \$100,000 to the Alien Property Custodian and treat the matter as a new matter for evaluation purposes.

Senator JONES of New Mexico. Well now, as a matter of equity would we be justified in going behind the \$100,000 proposition any more than we would the Chemical Foundation proposition?

Colonel McMULLEN. Of course that is purely a matter of policy for Congress. As a matter of law, of course, we do not have to do a thing about this property.

Senator JONES of New Mexico. Well then, as a matter of equity though, why should we go behind the one transaction if we are not going behind the other transaction?

Colonel McMULLEN. Well, that is purely a matter for the Senate, Senator, and not for me. I am afraid I will get in deep water if I—

Senator JONES of New Mexico. Well, I ask you whether you see any difference?

Colonel McMULLEN. Yes; I do.

Senator JONES of New Mexico. What is it?

Colonel McMULLEN. I think when you consider the traditional policy, which a great many people do not agree with me on, of the Government, that while we are settling this matter, as a matter of grace—the Germans have no legal nor equitable, in fact, I contend, no moral claim to any of this property—but that in the light of our traditional policy and our desire to keep up the, you might say, honor of the Anglo-Saxon race, I think we ought to do it. These transactions with outside parties were not the Government. This is the Government. What we have done is the Government. And to keep up the honor and traditional policies and traditions of this Government I think we ought to do it. That is why I think we ought to let the whole matter be adjudicated rather than fixing any sum. I have not any worry about what the Germans will get when they come to a matter of demarcation under this bill as the law now stands. I haven't any worry about that at all. If the Government is properly defended I have no worry about what they are going to get for the patents or the radio stations or the ships either.

Senator JONES of New Mexico. Well, it looks to me as if under the House bill we are simply going to involve some of these matters in a long period of litigation.

Colonel McMULLEN. I can not see it that way, sir.

Senator JONES of New Mexico. When you begin to investigate the validity of over 5,000 patents, and then the value of each one of those patents, if it is held valid, why it looks to me as if we have got a job that is going to continue into the next generation.

Senator SHORTRIDGE. The Mixed Claims Commission would be the tribunal to investigate.

Senator JONES of New Mexico. No; under the House bill we are to name an arbiter to adjudicate the matter.

Colonel McMULLEN. Senator, I would like to say this. I suppose you probably have more or less knowledge of it. When the war was over, at least when the Government had ceased operations, the War Department were confronted with 3,600 claims, including the patent claims, involving claims for about eight billions of dollars, and we settled that whole thing up, the War Department settled that whole thing up in less than a year and a half, and so far as I know, without a single exception, the courts have sustained every decision we made. And we did not pay 10 cents on the dollar in the settlement of those claims.

Senator SHORTRIDGE. Who presented those claims amounting to this vast sum?

Colonel McMULLEN. Contractors throughout the United States—contractors with the War Department throughout the United States. They were claims of all sorts.

Senator SHORTRIDGE. Yes. I did not catch that description of the claims.

Colonel McMULLEN. And with these claims, if we have the set-up and the broad authority and the money, with the proper organization and the proper authority to go ahead with these patents—claims we can clean this whole thing up in nine months.

Senator JONES of New Mexico. Well, then Colonel, under this bill as it came from the House there is put in a limitation of \$100,000,000 to cover the ships, radio stations, and all of these patents.

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. Well, now, if such a limitation is advisable, why not make a further limitation and say that so much of that may be applied to the patents and so much, we will say, to the ships? If you are going to have a general limitation why not divide the limitation?

Colonel McMULLEN. Well, I think the general limitation is perfectly safe, but a specific limitation I would not like to see. That is to say, personally, I think the general limitation is perfectly safe because I do not believe the final value of the ships, radio stations, and patents will exceed \$41,000,000. That is my estimate, if the cases are properly defended. That is, exclusive of interest.

Senator JONES of New Mexico. Well, when we are doing something which you have designated as a matter of grace, why shouldn't we make a specific limitation? Why shouldn't we limit the ships to a definite amount and these patents to another definite amount if we are doing the thing as a matter of grace?

Senator McLEAN. Well, because in some specific instance you might need a little more money than your limitation would permit.

Senator JONES of New Mexico. Well, we are not limiting each individual case, but simply putting a limitation in for a lump.

Senator McLEAN. No, but your arbiter has to administer all of these cases, and if when he finished he should find that he has not got quite enough money to be grace-full to all the claimants, why then you have not carried out your intention.

Senator JONES of New Mexico. Well, the intention is under the House Bill, to put a limitation.

Colonel McMULLEN. Yes, but I think it is a safe limitation. And when you get down to specific limitations, not general limitation, I think it would be dangerous, and it would not be judicial. And I

think that we ought to—of course that is my personal opinion—that we ought to in settling these matters up, be judicial.

The CHAIRMAN. Well, your opinion is that the limitation of the \$60,000,000 would be ample to cover all, the interest and all?

Colonel McMULLEN. Well, I don't know just how much the interest would be.

Senator JONES of New Mexico. He said \$41,000,000.

Senator SHORTRIDGE. Exclusive of interest.

The CHAIRMAN. Yes. And that the \$60,000,000 would cover that with interest on the \$41,000,000 at 5 per cent for the 10 years. That would be a little over \$60,000,000.

Colonel McMULLEN. Yes, about \$62,000,000.

The CHAIRMAN. About \$62,000,000. But you think that the limitation of \$62,000,000 instead of \$100,000,000 would be ample to cover every requirement to be met?

Colonel McMULLEN. Yes; but I would : ot want to see that limitation made, Senator, because if it came out where it was a little over \$62,000,000, and you had to cut it down, they would say that you had not judicially determined that matter. And I should think you ought to do it that way. If you are going to be graceful and fair I think you ought to make the best efforts you can to do it. And personally I think, from my knowledge of the entire subject, that you would be perfectly safe in leaving it to the arbiter.

Senator JONES of New Mexico. Now let us see if I can get this in a close compass. Certain patents were sold to the Chemical Foundation, for which the Alien Property Custodian received a definite sum of money.

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. Certain patents have been licensed to individuals other than the Government.

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. For which the custodian has received a certain sum of money.

Colonel McMULLEN. Yes.

Senator JONES of New Mexico. The Alien Property Custodian has licensed the other patents to the Government, and there is nothing left then in the Alien Property Custodian, is there?

Colonel McMULLEN. Oh, yes; the right, title, and interest to the patents are left there.

Senator JONES of New Mexico. But they are in the property of the Alien Property Custodian, though he is not receiving anything on that account?

Colonel McMULLEN. No, no; he has just merely got the right, title, and interest there of the patent itself subject to those licenses.

Senator JONES of New Mexico. Yes. Well then, if we turn back these patents now other than the ones which have been sold to the Chemical Foundation, and those which have been sold to the Government, and which the Government still needs, if we turn back the balance to the owners and make a reasonable payment—and I use the term "reasonable" in connection with what the Alien Property Custodian has done—in other words, if we confirm every transaction which the Alien Property Custodian has made and turn back these patents now to the owners, what would be the basis of an adjust-

ment? If we confirmed what the Alien Property Custodian has done and turned back these patents now?

Colonel McMULLEN. That, of course, Senator, is purely a matter for Congress to decide. That is purely a matter of policy. And nobody can make the policy of the Government except Congress, and the treaty-making power which is with the President and the Senate. Under the Constitution all the policies of the Government as such, the national policies, must be formulated and initiated as they come from the Constitution, and by the treaty-making power, that is the President and the Senate and the Congress, and nobody else can make the policy. And the whole question here is a question of policy of the Government, and nobody can say what that policy shall be except Congress.

The CHAIRMAN. In the estimate of \$7,500,000 do you recollect what the five thousand five hundred and odd patents that are now held by the Alien Property Custodian amounted to?

Colonel McMULLEN. Do you mean the license under those patents to the Government?

The CHAIRMAN. No; supposing we would turn all those patent back to the owners, what amount then could we deduct from the \$7,500,000 estimated by you for the whole of the patents?

Colonel McMULLEN. Well, I should say, Senator—I do not know whether I quite understand you or not, but my estimate, you see, is based upon the provisions of this bill, and my estimate of value of those 5,850 patents—

The CHAIRMAN (interposing). That is what I want, the amount.

Colonel McMULLEN. Was the value of the license which the United States has. Now that value I estimated at \$2,500,000.

The CHAIRMAN. Or, in other words, if we turn those back now to the owners it would be \$5,000,000, instead of \$7,500,000?

Colonel McMULLEN. Well, no, not quite, because we got that license in 1920, and we have had the advantage of it for seven years, and of course a great many of those patents, as I said, about 60 per cent of them at least, will have expired by the end of 1929. You have really got a complicated subject here, Senator: I mean when you come to fix their values.

Senator SHORTRIDGE. Senator, may I ask just one or two questions to develop this in its chronological order. The Government took over a certain number of these German patents?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. They were put in the custody or care of the Alien Property Custodian; is that right?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. The Alien Property Custodian then sold a certain number of them to the Chemical Foundation?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. It has now been held that title passed and vested in the Chemical Foundation?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. The Chemical Foundation then sold certain of the patents to the Government?

Colonel McMULLEN. Yes, sir. Did you say the Chemical Foundation?

Senator SHORTRIDGE. I did.

Colonel McMULLEN. No; the Alien Property Custodian. The Chemical Foundation have never sold anything to the Government.

Senator SHORTRIDGE. All right. The Alien Property Custodian sold certain of the patents to the Government?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. The Alien Property Custodian licensed certain patents to the Government?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. The title to those sold to the Chemical Foundation, according to decision, is vested in that grantee, the corporation?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Now, the Government agreed to pay the Alien Property Custodian a certain sum of money for the patents sold to it, the Government?

Colonel McMULLEN. Yes, sir; \$1 each.

Senator SHORTRIDGE. \$1 each. And did the Government agree to pay and has it paid to the Alien Property Custodian anything for the licenses?

Colonel McMULLEN. \$100,000.

Senator SHORTRIDGE. \$100,000. So that as to all these patents the legal situation as of now is this, that the Chemical Foundation owns certain of them?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. It has entered into certain contracts of sale and of license to various parties. It is not contended, is it, that we can disturb the title which passed to the Chemical Foundation?

Colonel McMULLEN. Not at all.

Senator SHORTRIDGE. That has passed beyond our control?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Is it the position taken here that the Government, however, still has power to dispose of and to handle and make proper legal, equitable, or, as a matter of grace, disposition of all of the patents still under the control of the Alien Property Custodian?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Yes. What they are, the number of those patents, is known?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Now, do I understand that the Alien Property Custodian or that the Government made use of certain of these patents during a certain period of time; and when did that time commence and when end?

Colonel McMULLEN. Well, approximately, it began on November the 12th, 1918, and ended on the date that the patents were either licensed to the Government or sold to the Government, or disposed of otherwise, which would be, roughly, in 1920. Would be about practically two years. There is a period in there of two years—just in round figures, of course—when the Government would use those patents, you might say, without authority.

Senator SHORTRIDGE. Well, do you understand that the Alien Property Custodian has not parted with the title to the patents which were licensed to the Government during that period?

Colonel McMULLEN. Only a few. He still has the title to the majority of them.

Senator SHORTRIDGE. Yes. And you are estimating, I understand you, that the fair, reasonable value of the use of those patents by the Government during that period was \$7,500,000?

Colonel McMULLEN. No, no. I am estimating that the use during that period and the license granted to the Government for the life of the patents and the 187 patents sold to the Government are worth \$7,500,000.

Senator SHORTRIDGE. Assuming the validity of all of them?

Colonel McMULLEN. Assuming their validity; yes, sir.

Senator SHORTRIDGE. That is all.

Senator JONES of New Mexico. Well, have you estimated that the license to the Government shall continue during the life of the patents?

Colonel McMULLEN. Oh, yes; yes, sir.

Senator JONES of New Mexico. Now, who could make up this sort of a list for the committee, a list of the patents which the Government ought to retain the absolute title to?

Colonel McMULLEN. I would not like to undertake that, Senator. It would take too long. That is a very difficult proposition, and may not be of any value whatever. Of course, I know of some now, but I would not say that that was all of them, or that we ought to put it on record. I do not think we ought to.

Senator JONES of New Mexico. Well, now, in disposing of this subject—it is a very peculiar subject—a patent is a mere right to use a certain process?

Colonel McMULLEN. Well, it is a deed to a certain piece of property, that is what it is.

Senator JONES of New Mexico. Well, it has that legal effect, of course.

Colonel McMULLEN. Yes.

Senator JONES of New Mexico. But after all it is simply a right to use a particular process?

Colonel McMULLEN. Yes.

Senator JONES of New Mexico. Now, the Government does not want to continue in business. It seems to me that generally speaking there are a few things, you say, where the Government ought to control the business?

Colonel McMULLEN. Yes. Senator, may I correct you there, if I may? The Government is not continuing in business. It is not in business. There are certain things in its peculiar operating departments, like the War and Navy Departments, where we have got to use things, I mean they are essential as a part of their business, the use of radio, for instance. But when you come to chemicals, we merely control it as the Commerce Department controls under the food and drug act, you know, control the turning of these things out. We merely control it.

The CHAIRMAN. We will adjourn now until to-morrow at 10 o'clock.

(Thereupon, at 12.25 o'clock p. m., an adjournment was taken until 10 o'clock a. m., the next day, Tuesday, January 18, 1927.)

RETURN OF ALIEN PROPERTY

TUESDAY, JANUARY 18, 1927

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

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

Present: Senators Smoot (chairman), McLean, Reed of Pennsylvania, Wadsworth, Shortridge, Jones of New Mexico, Gerry, Bayard, and George.

STATEMENT OF COL. JOSEPH I. McMULLEN, SECRETARY INTER-DEPARTMENTAL PATENTS BOARD—Continued

Senator JONES of New Mexico. Has any one in the War Department or the Navy Department made any examination of these various patents with a view to determining what patents the Government desires to retain and what not?

Colonel McMULLEN. I should say only casually, because we have not had the facilities to do it. You refer to the 187 we purchased, or the licenses?

Senator JONES of New Mexico. I wish you would deal with each class separately, but with respect to the thought.

Colonel McMULLEN. Under the 5,850 licensed patents, I should say there are about 928 cases where we would probably want to retain the licenses for the balances of the life of the patent: but of those 928 quite a number have already expired, so that it would be less than that.

This patent situation is rather complicated because in some of the cases we do not know exactly where we stand, because the patents were sold inadvertently to two different parties, in one instance to the United States—I mean some of them. There are not a great number that way. So that it would be very difficult to get right down to brass tacks without considerable study to determine just exactly which patents we could legally hold to—I mean either as to the license or as to the ownership.

The CHAIRMAN. Sold to two parties by the Alien Property Custodian?

Colonel McMULLEN. Yes, sir.

The CHAIRMAN. How many such are there?

Colonel McMULLEN. There were 692 duplications—I mean altogether—out of the 12,000 patents; either they were sold or exclusive license given duplicated. In one instance they were sold to three different parties, a group of patents. It was inadvertence or lack

of keeping track of their bookkeeping system or something of the kind. Some of those patents are important; and it is going to be a rather difficult thing.

Another difficulty is that those transfers have not been recorded in the Patent Office by anybody, not even the Government, and I have been unable up to date to locate the original assignments to the Government.

The CHAIRMAN. To whom were they sold first?

Colonel McMULLEN. That is what I do not know, because they are not recorded in the Patent Office. All we have is the record that they have been sold to two or three different ones.

The CHAIRMAN. Are all transfers required to be registered in the Patent Office.

Colonel McMULLEN. They are required to be registered within 90 days with respect to innocent third parties. As between the different assignees, I think the one who got the first assignment would be the legal owner. I do not think there is any question about that.

Senator JONES of New Mexico. Prior to the war did the Government buy patents?

Colonel McMULLEN. Occasionally; yes, sir.

Senator JONES of New Mexico. For its exclusive use?

Colonel McMULLEN. Occasionally; yes, sir.

Senator JONES of New Mexico. To what do those patents relate?

Colonel McMULLEN. Sometimes one thing and sometimes another. Sometimes they were ordnance, sometimes they were electrical, or referred to the Signal Corps or radio or various things, depending altogether upon its needs or circumstances in a particular case.

Senator JONES of New Mexico. Do you mean that the Government of the United States purchased outright a patent with respect to radio?

Colonel McMULLEN. Oh, yes.

Senator JONES of New Mexico. What was the nature of such patents, and why was it necessary for the Government to obtain the entire patent?

Colonel McMULLEN. Of course, I can not explain that. I can explain my viewpoint of it, but I do not know why in the particular case it was done.

For instance, just before the war, just about the time the war broke out, we bought out the Federal Telegraph Co. and the Poulson Wireless Co., two companies in California who controlled the Poulson patents. Poulson was a Swede or Norwegian or something, and the Federal Telegraph Co. controlled a certain number of these De Forest patents; and the Government were very anxious, particularly the Navy Department—the Navy Department bought the patents—to get control of sufficient patents so that they could set up a radio system, anticipating that they were going to get into the war, and had to be in position to do it.

Senator JONES of New Mexico. They did not purchase those patents with a view of preventing the patentee from granting rights to other American citizens?

Colonel McMULLEN. Oh, no. They bought the patents to prevent somebody else preventing the Government from doing what it wanted to do, or from charging the Government enormous royalty rates on those patents. In the end, it cost us a lot less than if we had

had to go out and pay De Forest and Poulson royalties on those patents. By buying those patents from those two more or less bankrupt companies for a comparatively small sum—my recollection is, \$1,700,000—we got all the equipment as well as the patents. We simply bought them out.

Senator JONES of New Mexico. When was that done?

Colonel McMULLEN. That was very early in 1917. I think it was just before the war. It was done by special authority of Congress.

Senator JONES of New Mexico. Prior to the war what was the situation?

Colonel McMULLEN. We occasionally bought patents outright. I can not say off-hand right now. I know that we did buy patents outright where it was a requirement for our needs—for instance, chemical patents relating to the production of smokeless powder or high explosives, things that we wanted—and in some instances we bought the application so as to keep it secret, and we delayed it along in the Patent Office to keep it from the public.

Senator JONES of New Mexico. That related to a thing which the War Department only intended to use; did it not?

Colonel McMULLEN. Well, no. You see, those high explosives are used in commerce as well as in the War Department; but there were some things that we wanted to keep from other nations. We would very often buy applications for patent, and things of that kind.

Senator JONES of New Mexico. You say they are used in commerce?

Colonel McMULLEN. I am talking about explosives now.

Senator JONES of New Mexico. So am I. In such a case, would you grant a license to an individual to manufacture that kind of an explosive?

Colonel McMULLEN. Oh, yes; we would under proper circumstances.

Senator JONES of New Mexico. Have you done so?

Colonel McMULLEN. Oh, yes; we have, I think. We granted, for instance, the du Pont Co. a license to manufacture it for us or for commercial purposes under certain patents that we owned, but only a nonexclusive revocable license. That is the only license that we have authority of law to grant.

Senator BAYARD. Were the patents you sold to the du Pont Co. Government patents primarily, *de novo*, or were they patents acquired by purchase?

Colonel McMULLEN. We acquire patents in a number of different ways. For instance, if we make a development contract with the du Pont Co. to experiment and produce a certain thing, sometime in the contract we provide that any inventions growing out of the contract at our expense shall be assigned to the Government. We get patents in that way.

The CHAIRMAN. You did not sell any to the du Pont Co.?

Mr. McMULLEN. No; we did not sell any; we just licensed them. We acquired a good many important patents in that way, through development contracts.

For instance, take the present searchlight, the 60-inch reflector, the only really successful 60-inch reflector made in the world. We paid about \$200,000 to have that developed, and we got the patent on it by reason of paying for the development.

The CHAIRMAN. They are all supposed to be for national defense?

Colonel McMULLEN. Yes, sir; and we usually, if we can get away with it with a contractor, protect the Government by taking title to the inventions that evolve out of the experiments.

Senator JONES of New Mexico. All that was upon the idea that the Government would need that particular process for use in governmental affairs; was it not?

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. Now, then, there is another class of patents to which you referred yesterday, such as salvarsan.

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. Upon what theory do you think that the Government should own those patents?

Colonel McMULLEN. I think I explained that yesterday. My theory on that is that that is a very important pharmaceutical, and a lot of others belonging in the same class, a specific for a particular disease, and dangerous if not made exactly right, and it ought to be not necessarily owned by the Government but under the control of the Government so that they could supervise the production of that pharmaceutical.

Senator JONES of New Mexico. Is not the same thing true with respect to thousands of other articles produced in general commerce by drug companies, etc.?

Colonel McMULLEN. I do not think so; no, sir; because salvarsan, as an example, and a number of other alkaloidal drugs and medicines, are specifics for particular diseases; and if they are not manufactured properly and with the greatest care, and taken with the greatest care, they are a menace to the public health.

Senator SHORTRIDGE. The Army and Navy made great use of them?

Colonel McMULLEN. Oh, of course. We made great use of that particular substance when the medical fraternity, after they completed our physical examinations for the war, decided that there were over 10,000,000 people in the United States who ought to be treated with salvarsan.

Senator JONES of New Mexico. Let me ask you this question: How long was salvarsan sold in this country before we got into the war?

Colonel McMULLEN. Six years.

Senator JONES of New Mexico. Did the Government make any attempt at that time to manufacture that product, to acquire that patent, to control the product?

Colonel McMULLEN. No.

Senator JONES of New Mexico. Why not? If it was not necessary then, why is it necessary now?

Colonel McMULLEN. Of course that is purely a matter of policy of Congress, and Congress did not take up the matter.

Senator JONES of New Mexico. But we have got to know something about these things so as to develop a policy.

Colonel McMULLEN. The view, as I have just said, sir, is that the drug is a specific for a particular disease. It is dangerous if it is not manufactured exactly right; and the Government ought to, as it is doing now, control the production of it so that it will be safe for the public. That is my personal view, of course.

Senator JONES of New Mexico. Yes. Now let me ask you again if there are not other such specifics manufactured by the drug trade which would be deleterious to health if not properly manufactured, and which are of value in the cure of diseases?

Colonel McMULLEN. That is true, and most of them we control. We control a good many of those now because we have gotten control of them through the seizure of these German patents.

Senator JONES of New Mexico. But prior to the war you do not do anything of that sort; did you?

Colonel McMULLEN. No.

Senator JONES of New Mexico. Why should we now embark upon a program which we did not even consider prior to our entry in the war?

Colonel McMULLEN. I should say we are already embarked. We are not starting to embark; we are already embarked. We have been embarked on it for about 8 or almost 10 years.

Senator JONES of New Mexico. We embarked upon it not through any act of Congress, as I take it, or any declared policy of Congress?

Colonel McMULLEN. No; I do not think Congress ever declared specifically that the Government should control the production of any particular sort of drug; but there is not any question but that they declared the policy in the trading with the enemy act and its amendments.

Senator JONES of New Mexico. But that was the result of our engagement in the war.

Colonel McMULLEN. Yes.

Senator JONES of New Mexico. And now we are dealing with things in peace time.

Colonel McMULLEN. Yes.

Senator JONES of New Mexico. And we are dealing with a question of policy which you are advocating with respect to the Army and the Navy which is entirely new so far as Congress is concerned.

Colonel McMULLEN. No; I do not like to admit, Senator, that I am advocating it. I am merely giving you the facts. I maintain that we are operating at present under the law. I am not advocating anything. It is not for me to suggest policies to Congress.

The CHAIRMAN. Was it not a fact that when the war was declared, and the draft was being made upon men all over the United States from every section and every class, it developed that syphilis was more prevalent in the United States than anybody had any idea of?

Colonel McMULLEN. Absolutely; yes, sir.

The CHAIRMAN. I suppose that was why they took this over, for the purpose of healing those that were drafted that had that disease.

Colonel McMULLEN. Yes. You see, this is a very rapid and a very sure cure for syphilis, taken at the proper time, and produced properly. Then, before the war, the regular price of the German drug was \$3.50 a dose, and it went up as high as \$50 before we got to producing it ourselves; and after we got to producing it ourselves we got a much better drug at 18 cents, price to the hospitals.

Senator JONES of New Mexico. Just explain to us where this drug is manufactured, under whose supervision, and by what authority.

Colonel McMULLEN. I can not explain that, Senator. I know off-hand that there are six companies—I could not name the companies, because I do not remember them, and I have not any record of it—

but I do know that early in 1917 six chemical companies were selected, two or three of them in Philadelphia (I forget the names of them offhand), who were celebrated for their ability in making fine chemicals; and they were given the problem and the work of producing salvarsan. After a very short time—I think probably I have here some report of the Surgeon General on the subject—they produced an article which was much superior to the German drug.

Senator JONES of New Mexico. Under the House bill, is it not contemplated that the Government shall take over all these patents and pay for them what the arbiter shall fix as a reasonable price?

Colonel McMULLEN. Not at all; no, sir.

Senator JONES of New Mexico. What is contemplated, as you understand it?

Colonel McMULLEN. Under the House bill it is contemplated that we shall pay the former German owners a fair price for the non-exclusive license which the Government now has. We merely have the right to use these patents by or for the United States Government, for its uses and needs. With respect to the 187 patents that we purchased, we will compensate the former owners for the fair value of the entire right, title, and interest, and we will then own the patents. We do now, as far as that is concerned. We will own the patents outright. There are 187 of those, of which all except 102 have expired.

Senator JONES of New Mexico. As to those 187, you think the Government ought to retain the complete title; do you?

Colonel McMULLEN. Probably not necessarily in every instance; some of them, certainly; but I would not like to say just offhand what particular patent or just what number ought to be retained—I mean, the entire right, title, and interest.

Senator JONES of New Mexico. Why should this committee be called upon to purchase now for the Government those 187 patents without any knowledge or information as to whether the Government needs those patents and should have them?

Colonel McMULLEN. I would say that the presumption is that we needed them or we would not have purchased them in the first place.

Senator JONES of New Mexico. But do you think this committee ought to act on presumption?

Colonel McMULLEN. I think you are perfectly justified in acting upon the theory that the people who bought those 187 patents in the first instance were honest and bought them with the best interests of the Government in mind at the time.

Senator JONES of New Mexico. May that not have been in view of the fact that we were then engaged in war and were getting them at a reasonable price?

Colonel McMULLEN. No; we were not engaged in war. All these patents were both licensed and purchased after the war was over.

Senator JONES of New Mexico. But it was because they were in the custody of the Alien Property Custodian, was it not?

Colonel McMULLEN. They were not. The Alien Property Custodian had not yet seized them. These patents were seized for the very purposes for which we are now using them, and under the special authority of Congress. By the way, the bill authorizing the seizure of these patents was passed and approved by the President on the 6th of November, 1918, five days before the armistice, and the

seizures did not start until some time in 1919. The whole thing was done after the war was all over and we knew it was all over; but it was done with a view to protecting the interests of the United States, the public health, etc.

Senator JONES of New Mexico. Was it not done as a war measure?

Colonel McMULLEN. Of course it was, as far as Germany was concerned, a war measure. As far as we were concerned, it was purely an economic measure, and you can not spell anything else out of it.

Senator WADSWORTH. That was the whole tone of the discussion at the time that bill was passed?

Colonel McMULLEN. Yes, sir.

Senator WADSWORTH. It was to prevent a resumption of the German monopoly.

Colonel McMULLEN. Exactly.

The CHAIRMAN. They did not want to pay \$50 a dose any longer.

Senator BAYARD. Do you think your statement of a moment ago that they were taken for nonwar uses after the armistice—

Colonel McMULLEN. I do not think I stated that they were taken for nonwar uses, sir. Some of them were taken for war uses in the future; that is true.

Senator BAYARD. You said they were taken for purely commercial purposes.

Colonel McMULLEN. No; I do not think I said that.

Senator BAYARD. I so understood you.

Colonel McMULLEN. I do not think I said that, sir.

Senator BAYARD. The reason I raised the question is that the declaration made in relation to the patents taken over and sold to the Chemical Foundation Co. was that they were for the purpose of enabling our people primarily to establish by utilization of those patents defensive means in case of war and secondarily the commercial operation came in.

Colonel McMULLEN. That, of course, is purely economic.

Senator BAYARD. But that was between 1918 and 1921, when the Berlin treaty was signed.

Colonel McMULLEN. Yes, sir. I think there is not any doubt but that what they had in mind was that they were desired for war use if we have war, but for peace use if we do not have war.

Senator BAYARD. But you say primarily it was a defensive operation.

Colonel McMULLEN. Of course; not only a national defense proposition but an economic defense proposition. It was in defense of our economic situation as well as our national defense situation.

Senator BAYARD. And, more than that, because at that time we were, technically speaking, at war with Germany, because we had not signed any peace.

Colonel McMULLEN. Yes; we had the full authority; we took it under the war powers. There is no question about that.

Senator JONES of New Mexico. Now then, if we are not going to disturb the transaction whereby we sold to the Chemical Foundation a large number of patents at a price which it is often said was nominal, why should we disturb this sale to the Government of the United States of these patents which were made to it at the price fixed at the time?

Colonel McMULLEN. My personal view is that in the sale to the Chemical Foundation the courts have said—of course the Supreme Court did not say that it was nominal, or that it was an adequate consideration; they said in that case it did not make any difference; but as a matter of fact the price was about \$50 a patent, and that is just about what the general run of patents were worth. There may be individual patents in that group, of course, that were worth a million dollars; but in our case, in the case of the Government, we admit that we paid only a nominal consideration, a dollar, merely a legal consideration. That is all we paid. I am not advocating paying for the German patents or paying for the licenses. That is not my business here. I am here because I was called here to give you the facts. I am not advocating anything one way or the other.

Senator JONES of New Mexico. I understand; but as a matter of fact, then, as to these 187 patents, the Government did buy them outright, and paid a consideration?

Colonel McMULLEN. A nominal consideration.

Senator JONES of New Mexico. And as to the balance of the patents which the Government took over, it licensed and paid a fee for that license; did it not?

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. I should like to ask whether there are any other classes of patents than those that were turned over to the Chemical Foundation, the 187 which were sold to the Government and the 5,000 and odd which were licensed to the Government?

Colonel McMULLEN. Yes, sir.

Senator JONES of New Mexico. What disposition, if any, did the Alien Property Custodian make of any others?

Colonel McMULLEN. There are a few others, not very many, that they turned back to the former enemy owners. I do not remember just the number, but there are a few.

The CHAIRMAN. Senator Southerland, do you remember how many were turned back?

Senator SHORTRIDGE. Turned back to whom, Senator?

The CHAIRMAN. To the enemy owners.

Mr. SUTHERLAND. What is the question, Mr. Chairman?

The CHAIRMAN. How many patents after the war were turned back to the enemy owners?

Colonel McMULLEN. One hundred and thirty-one. I have it right here.

Mr. SUTHERLAND. One hundred and thirty-one.

Colonel McMULLEN. Yes; I have it right here. I had forgotten that I had it.

Senator JONES of New Mexico. Do you know why they were turned back?

Colonel McMULLEN. They were turned back because they were ordered by Congress to turn them back.

Senator BAYARD. Under the Winslow Act?

Colonel McMULLEN. Under the Winslow Act; yes, sir. The Winslow Act provided, in substance, that all patents, trade-marks, etc., which had not been sold or otherwise disposed of should be returned to the former enemy owners, and that was all there was in that category—181.

Senator JONES of New Mexico. Would it not be cheaper to turn back a lot more than to try to pay for them?

Colonel McMULLEN. No. We are paying here for something we already have. You see, as I have already stated, in a great many instances a lot of these patents have already expired. We have had the use of them for 10 years—excluding the war period—anywhere from six months, you might say, to eight years. Some of the patents expired a year after the war, and, as I say, they vary from six months' use, you might say to eight years. That, we have already had. Of course, if Congress sees fit to turn back these patents that we bought, and just pay for the use up to the date they are turned back, that is another question; but to turn them back now without paying them anything of course would not make the former owners whole, if you desire to make them whole.

The CHAIRMAN. Your estimate of \$7,500,000 includes the use of those patents by the Government?

Colonel McMULLEN. Yes, sir.

The CHAIRMAN. From the time that they were turned over to the time that they are turned back?

Colonel McMULLEN. No. It includes the use of those patents from November 12, 1918, to the date that we took the license or purchased them, both dates inclusive. It includes the payment for the license itself, to use those licensed from the date we took the license to the end of the patent; and, for the patents we purchased, just a fair price for the value of the patent. Those are the three categories.

Senator JONES of New Mexico. If you eliminate any payment for the use of any of these patents until after the Berlin treaty, what difference would it make?

Colonel McMULLEN. About two years and six months.

Senator JONES of New Mexico. The treaty was made in October, 1921.

Colonel McMULLEN. It would make a difference of about two and a quarter million dollars, roughly. That would be a rather rough estimate—I mean, if you cut out that period of our use.

Senator REED of Pennsylvania. A question was asked as to what part of the Winslow Act applied to the return of patents. That will be found in subsection (j) of section 9 of the trading with the enemy act, as amended by the Winslow Act of March 4, 1923. It is as follows:

(j) Subsection (g) and paragraphs (9) and (10) of subsection (b) of this section shall not apply to any patent, trade-mark, print, label, copyright, or right therein or claim thereto, conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him, or to the proceeds received from the sale, license, or other disposition of any such patent, trade-mark, print, label, copyright, or right therein or claim thereto; but the Alien Property Custodian is authorized and directed to return to the person entitled thereto, whether or not an enemy or ally of enemy and regardless of the value, any patent, trade-mark, print, label, copyright, or right therein or claim thereto, which has been conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him, and which (1) has not been sold, licensed, or otherwise disposed of under the provisions of this act, and (2) is not involved (at the time this subsection takes effect) in litigation in which the United States, or any agency thereof, is a party.

Senator JONES of New Mexico. That is all, as far as I am concerned.

The CHAIRMAN. At what date was salvarsan first used by the Government?

Colonel McMULLEN. About July, 1917.

The CHAIRMAN. In any of your figuring have you figured any claim on the part of the Government between that time, 1917, and the close of the war?

Colonel McMULLEN. Oh, no; we have excluded that period. Strange to say, our large use of any of these patents was really after the armistice. You see, the reason for that was this: We were really just getting down to business when the end of the war came—I mean, as far as production and use was concerned.

The CHAIRMAN. You mean you had been experimenting in the meantime?

Colonel McMULLEN. More or less; but, you see, our wounded and sick were coming back from France, and our hospitals had been built, etc.—I am talking about drugs now—so that we had hundreds of thousands of men in the hospitals, and so that the use of these drugs—I mean, the large use—really came after the armistice. So I left out the period of use from 1917, when we started to use these drugs, up to November 11, 1918; and, as I say, in many instances our large use or our large infringement of patents came after the armistice.

Senator JONES of New Mexico. But before the Berlin treaty?

Colonel McMULLEN. But before the Berlin treaty; yes, sir. You see, we were not able to taper off our production until well along toward the last of 1919, as you probably remember.

The CHAIRMAN. Then the use of it up to the Berlin treaty you have not taken into account in your estimate of \$7,500,000?

Colonel McMULLEN. Not at all, sir. I have cut out that period entirely.

Senator JONES of New Mexico. I did not understand it that way at all. I understood the witness to say just a moment ago that he did not consider the use of it up to the time of the signing of the armistice, the 11th of November, 1918, but that he did include the use of it after the signing of the armistice down to the present time.

Colonel McMULLEN. That is correct. That is what I said.

Senator JONES of New Mexico. And so he did include in that estimate the period between the armistice and the Berlin treaty?

Colonel McMULLEN. Oh, yes; that is correct.

Senator WADSWORTH. You must have misunderstood.

The CHAIRMAN. Yes; you must have misunderstood my question, then. That was my question.

Colonel McMULLEN. Oh! I guess I misunderstood you then, Senator. Of course the large use which I considered and did consider was from November 12, 1918—I think I stated that clearly—up until the Berlin treaty.

Senator SMOOT. That is the day after the armistice was signed?

Colonel McMULLEN. Yes, sir. From then on, of course, I included. That is what I based my estimate on because it is during that period that we made the large use.

The CHAIRMAN. That is what I thought.

Colonel McMULLEN. Yes, sir. I misunderstood you, Senator.

Senator SHORTRIDGE. In August, 1914, as of the time of the beginning of the World War, the United States was dependent almost

wholly on Germany for certain dyes and chemicals. Is not that true?

Colonel McMULLEN. Yes, sir; and many other things.

Senator SHORTRIDGE. To be sure; but I am inviting immediate attention to dyes and chemicals, and including what was then called "606," or salvarsan.

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. It was discovered that a great many of our people in this country suffered from that disease of syphilis?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. That was discovered, was it not?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Just when was it that our Government seized or took over the German patents covering salvarsan?

Colonel McMULLEN. The seizure was not authorized until—

Senator SHORTRIDGE. I do not care whether it was authorized or not; when did we do it?

Colonel McMULLEN. When we started to infringe it was, as I formerly stated, July, 1917.

Senator SHORTRIDGE. Very well. Later, did the Government acquire title or claim to acquire title to the patent or patents covering this particular medicine?

Colonel McMULLEN. We did, through the Alien Property Custodian.

Senator SHORTRIDGE. Precisely. You have given that date here, have you?

Colonel McMULLEN. I do not know the exact date, but it was in 1919.

Senator SHORTRIDGE. It is easily fixed in the record.

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Now, since that time has the Government claimed to own that patent or patents?

Colonel McMULLEN. Well, of course, we have through the Alien Property Custodian.

Senator SHORTRIDGE. Certainly. The Alien Property Custodian seized, or took over possession—

Colonel McMULLEN. As an agency of the Government.

Senator SHORTRIDGE. As an agency of the Government, of this patent?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. And claimed the right to transfer title and did transfer title to the Government. Is that right?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Now, has the Government from that time forward until now claimed to have title to these patents?

Colonel McMULLEN. Except where we have sold them; yes, sir.

Senator SHORTRIDGE. Yes.

Colonel McMULLEN. In some instances they have been sold.

Senator SHORTRIDGE. I mean, the particular patent, Colonel, covering this particular medicine, for example.

Colonel McMULLEN. This particular patent, covering this particular medicine, as I recall, was sold to the Chemical Foundation.

Senator SHORTRIDGE. That is what I asked. It was sold to the Chemical Foundation?

Colonel McMULLEN. It was sold to the Chemical Foundation, though the Government reserved the right to control the production, etc.

Senator SHORTRIDGE. But you have just stated that the custodian took it over and sold the patent to the Government.

Colonel McMULLEN. No.

Senator SHORTRIDGE. You made that answer.

Colonel McMULLEN. Not this particular patent; no, sir. He took over certain patents and sold them.

• Senator JONES of New Mexico. My understanding was the same as that of the Senator from California. We both may have been in error.

Senator SHORTRIDGE. True.

Colonel McMULLEN. This particular—

Senator SHORTRIDGE. Question and answer will develop it much more quickly. The Government seized the patents?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. They were in the possession of our custodian. Is that right?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Then did the custodian license to the Government or sell the patent to our Government, if you remember?

Colonel McMULLEN. I should like to explain to you, Senator, that in these particular cases the Government sold what you might call the right, title, and interest to the patent to the Chemical Foundation, and they sold to the United States a license under the patent, and the right to all the choses in action under the patent arising before the date they sold it to the Chemical Foundation. It is rather complicated.

Senator SHORTRIDGE. I do not think it is at all complicated. This book here explains the whole thing, and I think a few questions and answers will clear it up. It is perfectly clear in other minds; it is not in mine now, according to this record.

These patents belonged to German owners.

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. I invite your attention to the immediate patent or patents covering this particular medicine.

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. This Government, through some agency, seized them. That is right; is it not?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. And they were under the control or in the possession of the Alien Property Custodian; were they not?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. The Alien Property Custodian sold them or granted nonexclusive licenses to the Chemical Foundation; did he not?

Colonel McMULLEN. He sold them to the Chemical Foundation.

Senator SHORTRIDGE. So that the Chemical Foundation claims to be the owner of these particular patents?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Now, the Chemical Foundation, then, under the provisions of the sale to it, granted nonexclusive licenses to certain manufacturers of this medicine?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Did it also grant to the Government, as such, the right to manufacture?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Not the title, but a license.

Senator REED of Pennsylvania. Was not that license in the Government reserved at the time of the sale to the Chemical Foundation?

Colonel McMULLEN. Oh, yes; it was a condition of the sale.

Senator REED of Pennsylvania. Then they did not grant it.

Senator SHORTRIDGE. It had been reserved by the Government, had it?

Colonel McMULLEN. Yes, sir. It was a condition of sale.

Senator SHORTRIDGE. When the custodian sold to the Chemical Foundation, the Government, speaking through him, reserved to the Government the right to use the patent?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. That is it, is it not?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. Then the sale to the Chemical Foundation as a corporation provided, to prevent a monopoly, that licenses should be nonexclusive if granted by it to various parties?

Colonel McMULLEN. Yes, sir; and on equal terms.

Senator SHORTRIDGE. And on equal terms?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. As of now, to-day, who, according to your information, is the owner of the patents?

Colonel McMULLEN. The Chemical Foundation.

Senator SHORTRIDGE. And who are enjoying licenses, if you can state that?

Colonel McMULLEN. I do not know the companies, of course; but there are six particular companies who are producing it.

Senator SHORTRIDGE. The Government took over those patents and other patents, as I understand you, as written records may disclose, for two reasons: First, as a war measure, and second, as an economic measure, to build up American industries and prevent foreign monopoly controlling this market. Is not that so?

Colonel McMULLEN. I should like to, if I may, Senator, change that just a little, because as a matter of fact—I do not think I have it with me—I have the original memorandum prepared in the War Department on this very subject. We took these patents to preserve the key industries, certain branches of key industries that were established as a war measure. It was to preserve those that we took these patents.

Senator SHORTRIDGE. Very well.

Senator JONES of New Mexico. Now, I think I am all confused again. Are these salvarsan patents a part of the 187 patents to which you have referred?

Colonel McMULLEN. No, sir; they are not.

Senator JONES of New Mexico. I have been led to believe all along that that is what we were talking about—something that the United States had taken—and now it appears that these particular patents were sold to the Chemical Foundation. What are some of those 187 to which you have made reference?

Colonel McMULLEN. As I stated yesterday, the most valuable of those 187 are a group of about 12 or 14 radio patents. There are others—engine patents, lubricating systems for engines, ignition systems for engines; I mean airplane engines—but the most important are the radio patents.

The CHAIRMAN. Any dye or drug patents?

Colonel McMULLEN. No; there are no dye or drug patents in those at all. Most of those are strictly what you might call mechanical or electrical or radio patents.

The CHAIRMAN. Was salvarsan the only drug for which the Government obtained a reservation?

Colonel McMULLEN. Oh, no. There were a lot of very important drugs. I can give you some of the most important drugs—I meant very important because we produced them in large quantities. These were considered absolutely essential by the Surgeon General.

This is a statement to me by the Surgeon General in 1922—General Ireland—and he said that it was developed that of the drugs which were essential to the conduct of the war, atropin, phenacetin, quinine, and salvarsan were the most important. There were a lot of others in his report, which is not all published yet—the medical history of the war.

The CHAIRMAN. You had a reservation made as to salvarsan?

Colonel McMULLEN. Yes, sir.

The CHAIRMAN. But you had no reservation made for the other drugs mentioned in that letter?

Colonel McMULLEN. You mean here?

Senator REED of Pennsylvania. In the sale to the Chemical Foundation.

Colonel McMULLEN. Oh, yes; we had reservations made as to all of them. We were merely talking about salvarsan. We had the same reservation applying to all the drugs and all the patents turned over to the Chemical Foundation that we had for salvarsan.

The CHAIRMAN. That is what I asked you.

Colonel McMULLEN. I did not understand it, Senator.

The CHAIRMAN. I asked you if salvarsan was the only one, and you answered "Yes."

Colonel McMULLEN. I did not get your meaning.

The CHAIRMAN. Then do I understand that of the 6,000 patents that were sold to the Chemical Foundation, the Government reserved the right to use all of those patents?

Colonel McMULLEN. Absolutely.

The CHAIRMAN. Did it also reserve the right to dispose of them in any way it saw fit?

Colonel McMULLEN. No.

The CHAIRMAN. For the Government's own use?

Colonel McMULLEN. It was the right to manufacture, use or sell for governmental purposes. I think I have the exact language here.

Senator JONES of New Mexico. I wish you would put in the record the exact language of that arrangement.

Colonel McMULLEN. It is very difficult to do it, because it is all a little bit different. There were seventeen different assignments to the Chemical Foundation, but I think one in general would do.

Senator JONES of New Mexico. If they were all the same, one will do; but—

Colonel McMULLEN. I meant, in substance they were all the same. The first assignment, the \$250,000 assignment, provided that they—

sell, assign, transfer, and set over the whole right, title, and interest acquired by me—

The Alien Property Custodian; this is to the Chemical Foundation—

to each of the letters patent, together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent of the United States against every person, firm, corporation, or government except the Government of the United States.

That was the nature of the assignment. There was another provision. That is just one of them, the \$250,000 assignment. That was afterwards confirmed in different language.

Senator REED of Pennsylvania. Then, Colonel McMullen, you were not quite accurate in saying that the Alien Property Custodian reserved those choses in action.

Colonel McMULLEN. Yes, sir; I am. That is the language there in this; but we have also reserved the choses in action.

Senator REED of Pennsylvania. But that is an assignment of them.

Colonel McMULLEN. I know it is inconsistent, but it is a fact nevertheless. We have a great many of such inconsistencies in the handling of these patents. I do not know how they happened, but it is a fact. There are 696 patents that were, for instance, assigned to at least two different parties; and in one instance there was a group of patents sold outright to three different parties, including the United States as one of them.

Senator JONES of New Mexico. I do not construe this assignment as you seem to indicate in your testimony.

Colonel McMULLEN. This particular assignment, Senator, was made three different times. Let me see if I can find one or two of the others.

Senator JONES of New Mexico. I should like to clear up what you have just put in the record. The language of this is as follows: After making a complete transfer of the whole right, title, and interest acquired by the Alien Property Custodian to each of these letters patent, then there is added—

together with all claims and demands for profits and damages recoverable at law or in equity for the past infringement of said letters patent of the United States against every person, firm, corporation, or government, except the Government of the United States.

As I construe that the only thing there that was excepted to the Government of the United States was any claim which the Alien Property Custodian might have for infringement of these patents prior to that date.

Colonel McMULLEN. Senator, as I said, that particular thing there is merely the substance of it. As a matter of fact, what I stated is true. I think Mr. Skinner over there can tell you that we did reserve to the United States the choses in action; and the chose in action here I think I can explain in this way: That from that time on, from the time they took all right, title, and interest, they got the choses in action. That, as a matter of fact, is the correct statement.

Senator JONES of New Mexico. We are not speaking of choses in action. What we have been talking about is the title to these patents, and the right to the use of the patents.

Colonel McMULLEN. The United States has the right to use them. We have that.

Senator JONES of New Mexico. Where do we get that right?

Mr. SUTHERLAND. Mr. Chairman, I think you will find that in the charter to the Chemical Foundation, which reserved to the United States Government the right to use all of these patents which were transferred to that Foundation.

Senator JONES of New Mexico. Does it reserve the right or permit the right, or what language is used with respect to the right?

Mr. SUTHERLAND. I will get that and put it in the record.

Senator WADSWORTH. I can not recollect where the language is used, or how the words are phrased; but it is a historical fact, and it has been known in the chemical trade and among the managers of the Chemical Foundation since 1921, that the Government has the complete right to use these patents.

Senator JONES of New Mexico. We are now trying to follow up the chain of title.

Colonel McMULLEN. The license to the United States is a very voluminous document, consisting of about 500 pages, I should say. If you want it in the record I shall be glad to put it in the record. I have the original copy.

Senator JONES of New Mexico. The license from whom?

Colonel McMULLEN. From the Chemical Foundation. I mean, we can put the whole history in if you want it. It is very voluminous; but what I have stated to you is merely the substance of these various things.

Senator JONES of New Mexico. I should like to know where and through what instrument and in what language the Government now retains the right or has the right to use this patent covering salvarsan, for instance, as an illustration only.

The CHAIRMAN. We have 5,999 patents.

Senator JONES of New Mexico. No; I refer now to this one as an example of those which were transferred to the Chemical Foundation, but which the Government has, through some source, the right to use.

Senator REED of Pennsylvania. Can you give us the date of the license from the Chemical Foundation to the United States for salvarsan?

Colonel McMULLEN. It is not separate from any other patent. It is included with 5,055 others.

Senator REED of Pennsylvania. I quite understand that, but—

Colonel McMULLEN. My recollection is that it is dated March 20, 1920.

Senator REED of Pennsylvania. Then it was not a reservation in the grant from the Alien Property Custodian, but it was a separate instrument of license from the Chemical Foundation to the United States?

Colonel McMULLEN. It is both. We had the reservation, and then we got the license.

Senator REED of Pennsylvania. I see.

Colonel McMULLEN. We have got them both; and also, as Senator Sutherland has stated, it is in the charter of the Foundation itself.

Mr. SUTHERLAND. Mr. Chairman, I will undertake to prepare and have prepared carefully a brief memorandum of a couple of pages which will set out the history of this patent business in compact form.

Senator JONES of New Mexico. Very well, then.

Mr. SUTHERLAND. I will give it to the reporter to put in the record.

Senator JONES of New Mexico. No; we want to have it before us in the regular way.

Mr. SUTHERLAND. Very well. I will prepare it for presentation to the committee to-morrow or next day.

Senator REED of Pennsylvania. To avoid further possible obscurity, may I propound a question?

You have mentioned atropin, phenacetin, quinine, and salvarsan as the four important drugs for war purposes. You do not mean that there were any patents in here covering the manufacture of quinine or of atropin?

Colonel McMULLEN. Oh, no. You see, here is where the patents hit some of those things: For instance, quinine—I do not know whether this is particularly true as to quinine—but as to some of these drugs that were not patentable or patented as a product, the process or machinery for producing them in a particular form was patented, you see. That is the way in which the Germans had control of these industries. They either patented the process for producing them in the shape that the trade wanted them, and kept the others out because they were able to produce them cheaper, or they patented the product itself. Not in every case were the products patented; but it happened that in the case of salvarsan the product was patented, the process of making it was patented, and the machinery for producing it was also patented; so they had it three ways.

The CHAIRMAN. These 6,000 patents that were sold to the Chemical Foundation for \$270,000 included salvarsan and almost all of the patents on chemicals and dyes?

Colonel McMULLEN. Yes, sir; and medicines.

Senator SHORTRIDGE. Perfumery, also.

The CHAIRMAN. Have you any idea of the amount of sales made by the Chemical Foundation, of salvarsan?

Colonel McMULLEN. They do not sell salvarsan. They license, as I stated before—they may have licensed more since but they license six selected manufacturers to sell it.

The CHAIRMAN. Do you know what percentage they get of the cost of production or the cost of sale?

Colonel McMULLEN. It would be comparatively small, because the producers are able now to sell it for 18 cents per dose to hospitals, and I should say that their percentage of return on the patents is very small. It would have to be.

The CHAIRMAN. Not small in aggregate amount, but small in each particular sale?

Colonel McMULLEN. Yes, sir.

Senator REED of Pennsylvania. What does their revenue amount to annually from the salvarsan patent: do you know?

Colonel McMULLEN. I do not know, sir. So far as I know, it never has been published.

The CHAIRMAN. Do you understand that the German owner of these patents has any right to bring an action against the United States for using these patents prior to the time that they were taken over?

Colonel McMULLEN. Not at all. They have not any rights to bring an action under the terms of the Versailles treaty, which were written into the Berlin treaty. They have absolutely no standing in court whatever with respect to any of these patents or any of the property. I mean, that to my mind is perfectly clear; and if it were not before, it is since the Chemical Foundation suit and the suit that was recently passed upon by the second circuit in Philadelphia, Judge Buffington. I have forgotten the name of the case.

Senator SHORTRIDGE. They would have no more right to bring a suit to recover those patents than they would have to bring a suit to recover a cannon which was captured on the battle field.

The CHAIRMAN. Then any payment that we may make is gratuitous as far as the Government is concerned?

Colonel McMULLEN. There is no question about that, Senator. There is not any question whatever in my mind that any payments you make with respect to any of this property—ships, radio stations, or patents—is a gratuity, absolutely.

The CHAIRMAN. Is there anything else that any members of the committee want to ask the witness?

Senator SHORTRIDGE. I should like to have a brief statement showing the derangement of the title, just like an abstract.

Colonel McMULLEN. May I make a suggestion, simply from the War Department's standpoint, with respect to the administration of this bill if it is passed as it stands?

The CHAIRMAN. Certainly.

Colonel McMULLEN. Because of the very nature of the proposition, the burden of furnishing the evidence in defending any claims, if you permit claims to be made against the United States, will fall upon the War Department; and the reason, of course, is that practically all the production under the patents, with the exception of the radio station, the use of the ships, was by the War Department; and, with the exception of the appraisal of the ships by the Navy Department, all the evidence of such use or value, if they permit such a consideration before the arbiter, will have to be furnished by the War Department. We have not, of course, any appropriation or any machinery for furnishing such evidence. It will be a task, in the case of the patents alone, that will be stupendous. It is a task that can be easily handled, though, and quickly handled, if we had the machinery and the money.

I think that probably an arbiter who happened to be a judge or an able lawyer might construe the bill as it now reads to charge all those expenses from the general fund which is set up in the bill; but I do not think it is safe to leave it as it is, because you provide in there, for instance, for the Comptroller General to pass upon the payment of these expenses. He might hold that the bill does not provide for that payment, and I think the bill ought to be made perfectly clear that it does provide for the payment of all those expenses of producing the evidence; for our records, for instance,

are stored, you might say, from New York to San Francisco. Of course some of the activities with respect to the use of these ships are in Honolulu. The records with respect to these patents are scattered all over the United States. It would involve travel and enormous expense for making photostatic copies of the records, etc. This bill, as I say, does not provide for paying that expense, and we have not any appropriations; and it certainly would delay the operation of the matter if that is not provided for, either in the bill or provided for in advance.

THE CHAIRMAN. Why not get an appropriation for it in the same way that every other appropriation is made for the War Department—have an estimate made for it, have General Lord pass upon it, send an estimate through the President to the House and Senate, and, if necessary, we could put it in the last deficiency bill when we know that it is going to pass?

Colonel McMULLEN. I was speaking, of course, primarily for the War Department, Senator; but the sources of information with respect to the defense of the United States in respect to making these payments for patents, ships, etc., are quite numerous. As I say, the burden will be on the War Department; but you have the Shipping Board, the Navy Department, the Alien Property Custodian—he may be able to pay the expense out of his fund; I do not know, but he will have to furnish quite considerable evidence—the Comptroller General's Office, and probably many other sources. This bill as it now stands provides for the payment of witness fees and travel of witnesses, but it does not provide specifically for the payment of these other expenses, and I think it is really the intention—that is my view, that it is the intention of the bill as it stands now—to pay those expenses, including the War Department expenses.

Senator WADSWORTH. Would it be possible to make one appropriation which could be allotted by a selected authority to the different branches of the Government that will have to incur expenses in this work?

Colonel McMULLEN. That is what it would amount to if you made it plain in this bill. I think it is in the bill now, but it is not plain; and, as I say, it might be construed otherwise.

Senator WADSWORTH. Have you any language to suggest which will make it clearer?

Colonel McMULLEN. Yes, sir; I have.

The CHAIRMAN. You can leave that with use, and we will consider it.

Senator WADSWORTH. Let us hear from the witness how he would clarify that.

Colonel McMULLEN. I would change subdivision (1) of section 4, page 12, line 15, by inserting, after the word "Arbiter," the following words:

and at the expense of the special deposit fund authorized under subdivision (a) of section 5 hereof.

That is the provision in the bill requiring the various departments and establishments to furnish the information required under section 188 of the Revised Statutes.

There is one other thing that I would suggest, Senator, with respect to the administration of this bill, and that is this:

Subdivision (a) of section 6 provides that—

The decisions of the Secretary of the Treasury in respect of the funds to be paid into the special deposit account and of the payments therefrom, shall be final and conclusive, and shall not be subject to review by any other officer of the United States, except that payments made under authority of subdivision (c) or (m)—

That is, the expenses—

of section 4 or subdivision (e) of section 5—

That is the Treasury Department's expenses in issuing certificates shall not be excluded from the audit by the Comptroller General. I provide here, instead of that—and I should like to explain the reason—that it shall be audited by the General Accounting Office and any alleged unauthorized payments reported to Congress.

The reason why I suggest that change—it would still be audited by the Comptroller General—is that in the administration of this bill, if it is passed substantially as it now stands, it will be necessary to rent offices, etc., in foreign countries. When you rent in Germany, for instance, one of the conditions of the contract, always—you can not get away from it—is that you pay what amounts to depredations; it means damage. Under our law we have not any authority to contract to pay unliquidated damages, and that is just an example of what you would be up against, and which the Comptroller General under the law I should think probably would disallow, and you would embarrass the arbiter. So I think it perfectly proper, of course, that the accounts should be audited; but provision should be made that they shall report the disallowances to Congress.

Senator JONES of New Mexico. Is it your view that this arbiter and his retinue would have to go to Germany and hold court over there?

Colonel McMULLEN. Not his retinue, probably; but he would have to send either some of the referees provided for under the bill or send somebody there. He might not have to go, but somebody would have to go—that is, if you propose to defend the interests of the United States.

Senator REED of Pennsylvania. Why not defend them here? Why not require the proofs to be brought here by the claimants?

Colonel McMULLEN. The proofs of the claimants would be brought here; but when it comes to the proofs of the United States we have got to get them where we find them, and with respect to many of these patents and some of the ship information, too, I should say it can be procured only in Germany. I should say that there is some very important evidence with respect to the defense of the United States to be had in Germany, and certainly a part of the hearings by the referees would be held over there.

The CHAIRMAN. Are there any other questions?

Senator SHORTRIDGE. I do not want to prolong the matter, Mr. Chairman; but the Colonel has spoken about patents, many of which he says in his judgment are invalid for certain reasons, some of which are of little value for certain reasons. Do I understand that if this bill goes through, containing a provision that some compensation shall be paid for these patents, the arbiter or some officer set up is to determine that question; namely, the amount of compensation for all these patents?

Colonel McMULLEN. Yes, sir.

Senator SHORTRIDGE. That is the idea, is it, as you understand it?

Colonel McMULLEN. Yes, sir; but it would have to be done individually.

Senator SHORTRIDGE. Certainly. Just for the record, may I ask you if this is a fair statement of the facts as of the time these patents were seized or taken in possession by our Government? I am quoting from the statement of a witness before a Senate committee:

There was no possibility of getting any idea of their value. For instance, so far as the Bayer patents were concerned, I know I took the advice of Mr. Mathewson, of the National Aniline, who has been in the business 35 years, and he had had his experts value those patents, and he did not value the patents of the Bayer Co. at over \$10,000. Right there I want to state that these German chemical patents are not an open sesame to the manufacture of the article named there; in fact, they are quite the opposite. I do not think there are any of them in which you can take the formula as filed with the Government and go and make anything out of it. Some of them are filed so that if you attempt to do so they will blow you up—that is, if you follow the formula that is there. So that it takes intense research to develop the idea of that patent, and it takes a large investment of money.

For instance, before we could work the 606 patent here, I do not know how many hundreds of thousands of dollars were spent by the Government and by private institutions and everything else to attain the manufacture under the patent. H. A. Metz himself, who went into the business of manufacturing under that patent, had to send his brother to Germany in order to get some idea of how to work it. The United States Drug Service spent an enormous amount of time and money upon them, and then, of course, it cost an enormous amount to set up a plant.

Is that a fair statement of the then condition?

Colonel McMULLEN. Yes, sir; I think it is perfectly fair.

Senator SHORTRIDGE. And those facts ought to be taken into consideration in arriving at the value, if any, of the given patent?

Colonel McMULLEN. Most certainly. That is the defense I am talking about, and that I say will be expensive, and that you have got to have funds for.

Senator SHORTRIDGE. Very well, sir.

The CHAIRMAN. Senator Sutherland, would you like to go on now? Are you ready?

Mr. SUTHERLAND. Just whenever you wish, Senator.

The CHAIRMAN. How long will it take you—a half hour?

Mr. SUTHERLAND. I have no prepared statement. I only wish to give whatever information you want.

The CHAIRMAN. You can take the chair, and we will proceed. I hope we can get through by 12 o'clock.

STATEMENT OF HON. HOWARD SUTHERLAND, ALIEN PROPERTY CUSTODIAN.

The CHAIRMAN. Senator Sutherland, you have been here during all of these hearings, and I take it for granted that you have some statement that you want to make to the committee. If you are prepared now to proceed, we shall be glad to hear what you have to say.

Mr. SUTHERLAND. Mr. Chairman, with reference to the bill I will only say that I had no particular part in preparing the bill. I was called into conference upon one occasion at the Treasury Department, having had the bill in my possession a few hours only prior

to that, and asked what I thought about the bill. I had not even had an opportunity to read it all. I told them that I was very much in favor of some legislation, and that so far as I had been able to read the bill it appeared to be a very fair bill in a general way, but I was not attempting to advocate that particular bill or any particular bill, but I was in favor of the general principle of returning the property under whatever plan the Congress decided to adopt that would safeguard all of our interests.

Now as to the particular provisions of the bill as to retaining a certain fixed percentage: That is entirely a matter of policy which this committee is better qualified to pass upon than anybody else. This bill has to do with a great many things with which my office has had nothing whatever to do, and I have not particularly studied all these related questions. I have been trying to administer the affairs of which I was in direct charge.

The CHAIRMAN. Were you consulted in the preparation of the bill?

Mr. SUTHERLAND. Not at all, except that I had only had the bill in my possession a few hours before I was asked what I thought of it. It is a rather complicated bill. I did not even attempt to read it all. I read the main provisions of it, and was in sympathy with the general purposes of the bill only, and did not attempt to pass upon the adequacy or the sufficiency of all of its provisions.

Senator JONES of New Mexico. If it will not disturb your line of thought, as I understand this bill there is to be a special fund set up, and into that fund is to be put 20 per cent of the property seized by the custodian. Of course, as to that part of the property which has been converted into cash, there will be no difficulty about that; but, as I understand, there is still a considerable amount of property not converted into cash.

Mr. SUTHERLAND. I brought that feature to their attention. There is also in the possession of the Alien Property Custodian considerable real estate; and of course it is quite evident that the only way in which that could be returned in the proportion set forth in the bill would be to liquidate it, or any of this other property.

Senator GERRY. Does that touch those wharves at Hoboken? Are they included in that?

Mr. SUTHERLAND. Those wharves have been sold.

Senator GERRY. Yes; that is my recollection, that they have been sold.

Mr. SUTHERLAND. Yes. So that the provision, I presume, is in the bill—they stated that it would be—that where the custodian had property other than cash, and it was intended under the bill to keep 20 per cent, the property would be appraised, and the alien owners would be permitted to put up 20 per cent in cash in the hands of the custodian, and then receive their property back.

Senator REED of Pennsylvania. That is in the bill?

Mr. SUTHERLAND. Yes.

Senator JONES of New Mexico. Who is to appoint the appraisers?

Mr. SUTHERLAND. Of course that machinery would have to be set up in the bill.

Senator JONES of New Mexico. Is it set up?

Mr. SUTHERLAND. The Alien Property Custodian office has been making appraisals all the way along. We have had them made by

capable people where we had not the machinery to do it, or had not a capable person. In those cases we would get people who had. We have had all our stocks and bonds appraised, of all classes.

Senator JONES of New Mexico. They were appraised by your office, were they?

Mr. SUTHERLAND. Yes.

Senator JONES of New Mexico. Or, in other words, the Alien Property Custodian, through some process of his own, has fixed the value on these properties which have been sold?

Mr. SUTHERLAND. Yes.

Senator JONES of New Mexico. And has fixed the value on the properties which are yet unsold for the purposes of this 20 per cent?

Mr. SUTHERLAND. Yes; unless it was otherwise provided.

Senator BAYARD. Do you understand that this Mixed Claims Commission can go over the head of your office in determining values at other appraisals than the appraisals made by your office?

Mr. SUTHERLAND. I do not understand that they can, with reference to property which we hold.

Senator JONES of New Mexico. As I understand, the Mixed Claims Commission simply ascertains the amount of claims against Germany or German nationals?

Mr. SUTHERLAND. Yes.

Senator JONES of New Mexico. And that the property in the hands of the custodian will be either liquidated or appraised by him?

Mr. SUTHERLAND. Yes.

Senator JONES of New Mexico. And his valuation will be accepted as final?

Mr. SUTHERLAND. Yes.

Senator SHORTRIDGE. The bill so provides; does it?

Senator JONES of New Mexico. That is the point I was trying to bring out—whether under this bill that would occur.

Mr. SUTHERLAND. The bill provides for the deposit of the 20 per cent; but I can not state just offhand about that appraisal—who is to make the appraisal. In the absence of that I assume that the custodian would make his own appraisal and fix the valuation, just as I am obliged to do under the law at present with reference to sales of property.

The CHAIRMAN. Would not the arbitrator fix that?

Mr. SUTHERLAND. No; the arbitrator is simply to fix the valuation of certain specified things—that is, the ships and the patents and copyrights and the radio station.

Senator JONES of New Mexico. That is all.

Mr. SUTHERLAND. But, of course, a very large percentage of this property is now held in cash in the Treasury.

Senator JONES of New Mexico. The point that occurred to me was this: If we are going to trust to our own agent—namely, the Alien Property Custodian—to put his value upon all property taken over by him, why should we not in this bill accept the appraisal which is put upon the ships made by an agency of the Government of the United States, and why should we leave that valuation to an arbiter when we are not leaving to an arbiter or anybody else the question of the actual value of this property taken over by the custodian?

Senator REED of Pennsylvania. I think we are leaving it to the custodian. This bill speaks of the retention of "20 per centum of the aggregate value of such money or other property, as determined by the Alien Property Custodian." I find that on page 32, section 12, of the bill. That is the only thing I see in the bill which deals with the valuation of the physical property.

Senator SHORTRIDGE. That would be binding on the arbiter.

Senator REED of Pennsylvania. It probably would be binding on everybody.

Senator JONES of New Mexico. I think we ought to have some expert draftsman tell us whether or not that is made plain in the bill.

Senator REED of Pennsylvania. Senator Sutherland, can you tell us in round figures how much of the principal of the alien property now in your hands is in cash, how much is in stocks and bonds, and how much is in lands and other properties?

Mr. SUTHERLAND. Yes, sir. Under a reappraisal made on October 31, 1926, a few months ago, the amount of cash deposited with the Secretary of the Treasury, invested, was \$180,752,717.56; uninvested, \$649,515.83; a total of \$181,402,233.39.

The CHAIRMAN. Is that \$650,000 in the Treasury?

Mr. SUTHERLAND. Yes; that is in the Treasury.

Senator JONES of New Mexico. Why not invest it?

Mr. SUTHERLAND. That is some floating money that you need to pay out, you know. We sometimes have to sell something in order to pay out these claims: so there is always a small balance there uninvested. We need the cash. You see, we are paying out something like a million and a half dollars a month; so there is always a cash balance there. Every now and then I have to order something sold in order to get cash.

Senator REED of Pennsylvania. What other property have you?

Mr. SUTHERLAND. Cash with depositaries, \$364,334.80; stocks, \$46,526,022.49; bonds other than investments made by the Secretary of the Treasury, \$33,960,338.97.

The CHAIRMAN. Those were investments which were made by the custodian?

Mr. SUTHERLAND. Those were bonds, property in its original form, taken over by the Alien Property Custodian.

The CHAIRMAN. Oh, taken over?

Mr. SUTHERLAND. Yes.

Mortgages, \$1,877,638.58. That is the same type.

Notes receivable, \$313,345.56.

Real estate, \$5,786,744.89.

Accounts receivable, \$702,141.22.

Miscellaneous, \$605,066.99.

A total of \$271,537,866.89.

Senator REED of Pennsylvania. How much of that is corpus, and how much is income?

Mr. SUTHERLAND. Whatever we have in our possession of income is included in that; but we are paying out considerable income, and of course the treasury includes accruals of income from time to time.

Senator REED of Pennsylvania. But you have upward of \$25,000,000 of unallocated interest; have you not?

Mr. SUTHERLAND. Yes. That would be included in that \$180,000,000. That is invested also, you see.

Senator REED of Pennsylvania. All income accruing since the passage of the Winslow act has been paid to the alien owners; has it?

Mr. SUTHERLAND. Yes.

Senator REED of Pennsylvania. So far as they could be located?

Mr. SUTHERLAND. It is being credited, and so far as we can establish their right to it we pay it to them up to the limit set forth in the bill, \$10,000.

The CHAIRMAN. Have you got most of those \$10,000 claims provided for in the Winslow act paid?

Mr. SUTHERLAND. Yes; most of those, a very large number of them, have been paid.

Senator REED of Pennsylvania. I was asking him about the payment of income, Senator. You are asking him about the payment of \$10,000 of principal.

The CHAIRMAN. Yes; but he answered you in relation to the income, and then referred to the other matter.

Mr. SUTHERLAND. The value of property returned under section 23 of the Winslow Act—that is, relating to income—was \$9,508,630.28.

The total value of all property returned to date of October 31 is \$330,615,590.45.

The entire amount returned under the Winslow Act—that is, other than the interest—is \$48,685,983.

Senator BAYARD. Do your figures show, Senator, how much of the last sum you have just mentioned would apply to capital, and how much apply to interest?

Mr. SUTHERLAND. You mean of payments made?

Senator BAYARD. No; you referred to these payments made under the Winslow Act, and you mentioned some forty-odd million dollars. Under the Winslow Act, all estates up to \$10,000 were to be paid in toto.

Mr. SUTHERLAND. Yes.

Senator BAYARD. And then the interest of \$10,000 on the larger estates?

Mr. SUTHERLAND. Yes.

Senator BAYARD. How much of that sum of forty-odd million dollars is allocated to the payment of the principal, and how much—

Mr. SUTHERLAND. That is all principal, and the interest is the \$9,508,000 which I read; and the total amount of property returned under the provisions of the act, section 9, exclusive of the Winslow Act—that is, returns to others provided for in section 9, as amended at various times—is \$272,420,977.17.

Senator SHORTRIDGE. Right there, Mr. Chairman, may I ask whether your statement shows whether you, as the officer, have paid to the foreign or German fire-insurance companies anything, meaning those fire-insurance companies against which certain citizens of California have claims?

Mr. SUTHERLAND. There have been no amounts paid, Senator. We still hold those.

Senator SHORTRIDGE. The Winslow Act, as I recall, provided against such payments.

Mr. SUTHERLAND. Yes. We are still holding all of that.

Senator SHORTRIDGE. I am very glad to know that.

Senator REED of Pennsylvania. Senator, we may confuse your statement just made about payments of interest under the Winslow Act. You gave an item of \$9,000,000, which you said was interest returned to the owners under the provisions of the Winslow Act. Did that mean interest accumulated prior to the passage of the Winslow Act?

Mr. SUTHERLAND. Oh, no.

Senator REED of Pennsylvania. Or subsequently to it?

Mr. SUTHERLAND. Since, subsequent to March, 1923, when the Winslow Act was enacted—March 4, I think it was.

Senator REED of Pennsylvania. Down to what date?

Mr. SUTHERLAND. Down to October 31, 1926.

Senator REED of Pennsylvania. Now then, in the \$48,000,000 which you describe as being principal, which was paid to them under the Winslow Act, there was included some accumulated income prior to the date of the passage of the Winslow Act, necessarily; was there not?

Mr. SUTHERLAND. Well, not of money in the Treasury, because money in the Treasury was not allocated to anybody, and is still held there, amounting as I recall to about \$33,000,000; but only the money that has earned interest since that has been included.

Senator JONES of New Mexico. Is the \$33,000,000 to which you have just referred included in the total of the moneys now in the Treasury, which you have already given?

Mr. SUTHERLAND. Yes.

Senator REED of Pennsylvania. The unallocated interest fund amounts now to \$33,000,000, does it?

Mr. SUTHERLAND. I can give you the exact figure, but that is my recollection.

Senator GEORGE. That is the fund that is to go into the special fund, as I understand, set up in this bill—the unallocated interest?

Mr. SUTHERLAND. Yes.

Senator REED of Pennsylvania. It is stated in the House report as being \$25,000,000.

Mr. SUTHERLAND. I think it is somewhat larger than that. Under the decision in the Henkel case it was decided that property of Americans is entitled to interest no matter at what time it was burned, either prior to or since March, 1923. Therefore, a lower figure has been used, because we have not known exactly how much of this unallocated interest would be payable to these American claimants who are now coming back and asking for their portion of the interest. I will put the exact figure in the record, Senator. I have not it right at hand. I think it is about \$33,000,000.

Senator REED of Pennsylvania. Out of that \$33,000,000 there is a part which belongs to German claimants.

Mr. SUTHERLAND. Yes.

Senator REED of Pennsylvania. And there is, of course, a further part which belongs to the Austrian and Hungarian citizens?

Mr. SUTHERLAND. Yes. I think I have here a statement which shows all of the property held of the following nationalities:

Germans	\$251, 709, 441. 83
Austrians and Hungarians	12, 478, 182. 31
Interned	15, 400. 00
Other nationalities	7, 334, 842. 75
Total	271, 537, 866. 89

The CHAIRMAN. Have you any suggestions to offer by way of amendments to the House bill?

Mr. SUTHERLAND. I have not thought of any particular amendments. I passed upon one that Senator McLean had submitted to him by some one in his State, on yesterday I took the papers and studied them over, and also have had them studied by others, it being in regard to the claim of a German citizen who had been left property by a brother abroad, who had died over there before we got into the war. This man was entitled to money or the property, and the property was seized. He came within the class of persons proclaimed by President Wilson as being enemy. And yet certain other classes of aliens have had their property returned, but under the existing law we can not do that. I wrote to Senator McLean that I saw no objection to including that class in the bill. That is a minor matter. There would probably be several entitled to a return under such a provision as his constituent suggested.

The CHAIRMAN. You have no idea as to the amount of such claims?

Mr. SUTHERLAND. No; but it would not be very large. It might amount to several million dollars, all together, but it would not be very large.

Senator REED of Pennsylvania. Some of our citizens who have purchased alien property have been put to heavy expense in defending suits brought by enemy owners. Has any suggestion been made to you that the bill should include a provision for compensating them for their expense in defending their title?

Mr. SUTHERLAND. I have had no such suggestion made to me, but I would think it would be worthy of consideration.

Senator JONES of New Mexico. I notice in the document referred to as the McCarl report a statement that a citizen of Germany acquired certain properties in the United States before the war, and that he went over to Germany and fought in the German Army, but afterwards returned to the United States, and that he had been paid something over \$600,000 by the Alien Property Custodian. Do you know anything about that claim?

Mr. SUTHERLAND. Mr. Skinner may be able to give you some facts about that.

The CHAIRMAN. Will Mr. Skinner look up the details of that?

Mr. SUTHERLAND. Mr. Skinner gives me a statement here by which I see the claim referred to is in Senate Document 182, Sixty-ninth Congress, second session, on page 125:

The claim of Paul Haberland, trust 13928, claim 6665, was allowed on October 21, 1921, by assistant to the Attorney General Guy D. Goff, for \$595,745.65. It appears that Paul Haberland, formerly president of the Garfield Worsted Mills, was taken from a steamer en route to Holland and interned by the French, as he was a reserve officer in the German Army; later exchanged as a prisoner through Switzerland and served in an auxiliary service

of the German Army. The Department of Justice gave the following reason for the allowance of the claim:

"The department is therefore allowing this claim upon the ground that this man was in the same position as a German citizen interned in the United States."

This claim was forwarded to the Department of Justice for allowance September 21, 1921, apparently with the claim for American Metals, as the question as to whether or not it was immediately allowed was the subject of telegrams between T. W. Miller and his secretary, F. H. Wilson.

The opinion of the Department of Justice, dated October 16, 1923, and signed H. M. Daugherty, recommends the allowance of claims of William Graupner, John H. Love, and Anton Schmid for the proceeds of certain Garfield stock amounting to \$51,823.00.

The allowance as stated in this opinion rests entirely upon the evidence shown on the certificates that they were indorsed on March 30, 1916, by the original owner, Edward Lelwess, in the presence of Carl Schmieder, before a German notary.

I have here a statement of that interest, or of the unallocated interest, or interest on that interest, up to March 4, 1926, amounting to the total of \$32,260,302.45.

The CHAIRMAN. The committee will now stand in adjournment until 10 o'clock Thursday morning.

(Whereupon, at 12.15 p. m., the committee adjourned to meet again Thursday, January 20, 1927, at 10 o'clock a. m.)

RETURN OF ALIEN PROPERTY

THURSDAY, JANUARY 20, 1927

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

The committee met, pursuant to adjournment (the session set for Wednesday, January 19, having been postponed), at 10 o'clock a. m., in the committee room, Senate Office Building, Senator Reed Smoot presiding.

Present: Senators Smoot (chairman), McLean, Reed of Pennsylvania, Wadsworth, Jones of New Mexico, Bayard, and George.

STATEMENT OF HON. EDWIN B. PARKER, UMPIRE OF THE MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

The CHAIRMAN. Mr. Parker, what position do you hold in the Government service?

Mr. PARKER. In the Government service?

The CHAIRMAN. If you hold any, say so.

Mr. PARKER. I am umpire of the Mixed Claims Commission. I asked that question because it is not in the Government service.

The CHAIRMAN. I did not know but that you held some other position.

Mr. PARKER. No.

The CHAIRMAN. Did you testify before the House committee?

Mr. PARKER. I did.

The CHAIRMAN. Did you say before that committee all that you desired to say in behalf of the pending measure?

Mr. PARKER. Mr. Chairman, I do not wish to be hypercritical or to bandy terms; but, occupying the position that I do as umpire of the commission, holding that appointment by the Government of the United States and the Government of Germany jointly, I could not with propriety say anything either in behalf of or against the measure; but I shall be more than glad to give to the committee any information as to facts which I possess.

The CHAIRMAN. Senator Jones, have you any particular line of questions that you desire to ask?

Senator JONES of New Mexico. Just in brief way.

I should like to know what the commission did, if anything, toward promulgating the fact of its organization, and the time-limit for the filing of claims before the commission.

Mr. PARKER. The commission did nothing, Senator Jones. The commission sits as a court to hear cases brought before it in an orderly manner. I am advised that the Government of the United States, which was one of the parties before that tribunal, did broad-

cast notice through the press and by writing numerous letters to everyone that had communicated with the department or that they had any reason to believe had any claim against Germany, that notices were given out in the usual way a number of times in conferences with the press; but that is a matter about which the American Government can better speak than I can.

Senator JONES of New Mexico. We have asked the Secretary of State to furnish us with anything the State Department has done regarding that matter, and I wanted to get a statement in the record as to whether or not the commission itself had done anything regarding that subject.

Mr. PARKER. You will readily appreciate, Senator Jones, that the commission, sitting as a judicial tribunal, could not with propriety advertise for litigants to come before it.

Senator JONES of New Mexico. I think that is probably a correct view to take of the matter.

Senator BAYARD. Did your commission feel itself precluded from taking any cognizance of the matter of extension of the six months' period after the Government had made its engagement with Germany, as appears from the record?

Mr. PARKER. May I answer that question by stating very briefly the status of the commission?

The commission, as you know, is composed of three members—a German commissioner, and American commissioner, and the umpire selected by agreement of the two Governments. It is constituted under an agreement between the two Governments of August 10, 1922. Under that agreement, the commission has jurisdiction to hear and determine all claims of the United States or its nationals against Germany falling within the terms of the treaty of Berlin. The two Governments had agreed that Germany, who was the defendant in this action, should have notice of all claims to be presented within six months after the first meeting of the commission. As a matter of fact, the commission did not meet for two months, approximately, after the agreement was signed.

That agreement between the two Governments was, in effect, a period of limitation so far as the commission was concerned. The commission, of course, had no voice in fixing its jurisdiction, which was fixed by the treaty of Berlin. It could neither add to nor take from that jurisdiction.

So far as the period of limitation is concerned which was agreed to between the two Governments, that was a matter which was binding on the commission.

Senator BAYARD. In other words, that was a rule under which the commission felt itself bound to proceed without any question?

Mr. PARKER. It had no voice, of course, in either making the agreement or making the treaty. It was constituted under the agreement, and its task was to apply the terms of the treaty of Berlin to the claims that were presented to it.

Senator BAYARD. And your commission took that stand notwithstanding the fact that the Berlin treaty provided that all claims might be submitted to your commission—I mean, regarding the period of limitation of filing claims?

Mr. PARKER. Yes.

The CHAIRMAN. Senator, do you mean—could your question be construed to mean—that those claims could be submitted at any time without any limit of time?

Senator BAYARD. My point is that the treaty in itself provides that all claims of American nationals may be presented before this commission.

The CHAIRMAN. Yes.

Senator BAYARD. The agreement between Mr. Kellogg and the German ambassador here in Washington made a period of limitation of six months after the first meeting of the commission.

The CHAIRMAN. Yes.

Senator BAYARD. The question has come up, because of the filing of claims since the expiration of that period, of the right of the American nationals to have determined their claims which had been filed since the expiration of that period; but the commission, as I understand from the commissioner, have taken the stand that they are precluded from entertaining any such claims because the rule was made before they commenced to operate, and they are bound by the rule. That is the substance of it.

The CHAIRMAN. Do you agree with the commission, or do you think that the claims could be filed 10 years from now, we will say?

Senator BAYARD. I merely wanted to know what position the commission took, and why. That was the substance of it.

Mr. PARKER. May I suggest that it is hardly accurate to say that we adopted a rule or followed the rule adopted by the two Governments. We were bound by the agreement of the two Governments. The commission, as you know, does not exist under the treaty of Berlin. It is a very different tribunal than any that is referred to or any that is provided for in the treaty of Versailles. The treaty of Berlin defines or prescribes what Germany shall pay for, but there is nothing in the treaty of Berlin which stipulates how much Germany shall pay.

Senator JONES of New Mexico. Or how it shall be ascertained.

Mr. PARKER. Or how it shall be ascertained.

The CHAIRMAN. Or when it should be paid.

Mr. PARKER. Or when it should be paid. The commission has repeatedly held that it has nothing in the world to do with the payment of claims against Germany. That is a matter for the two Governments to deal with.

Senator BAYARD. It is merely a fact-finding commission?

Mr. PARKER. That is too narrow a definition, too. The treaty of Berlin prescribes, as I said a moment ago, what Germany shall pay for. The two Governments entered into an agreement providing for an international judicial tribunal to determine how much Germany should pay. Obviously, that requires a construction of the treaty to determine what claims fall within the terms of the treaty. That is the first task that confronts us when a claim is presented: Does it fall within the terms of the treaty of Berlin? Is Germany financially obligated to pay this claim? In that sense it was something more than a fact-finding commission, because it had to construe the treaty.

Senator BAYARD. In other words, your commission, under the treaty of Berlin, had a right to pass upon the character of the claims as well as their validity?

Mr. PARKER. It was required to determine the classes of claims which fell within the treaty of Berlin. There were many claims. The treaty of Berlin, as you very well know, is quite general in its terms. In order to construe the treaty, it was necessary in some instances to have recourse to the pre-armistice agreements, to the terms of the armistice, to the terms of the treaty of Versailles, and to the negotiations leading up to the treaty of Berlin. The commission undertook, as far as was practicable, to construe the treaty by what it termed administrative decisions.

I do not wish, Mr. Chairman, to go into too much detail, but I can not very well answer the Senator's question without very briefly explaining how the commission functions.

There were some 13,000 claims filed of which the United States gave Germany notice within the six months' period. They were of a great many different classes. Obviously, if each of those claims had been tried as a separate lawsuit, it would have taken from 30 to 50 years to complete the work. So, believing as the commission did, a fact emphasized by both Governments, that it was to the interest of both Governments that this task should be speedily disposed of, the commission classified those 13,000 claims into different groups, and then would hear typical cases in each group, and would lay down the principles which should govern the decision of that group of cases, so that the agents, through the counsel for the private claimants, might prepare their cases under those decisions and leave out all evidence that was immaterial or irrelevant. In that way it was possible, after the principles governing the decisions were laid down, for the agents in many cases to stipulate the facts, and from those facts the national commissioners—the German commissioner and the American commissioner—could agree on the award, if any, to be made.

Senator BAYARD. May I interrupt you there for one moment?

Mr. PARKER. Yes.

Senator BAYARD. Who agreed primarily to these stipulations as to facts on behalf of the nationals of the Americans or on behalf of the nationals of the Germans?

Mr. PARKER. America is represented before the commission by an American agent, Mr. Bonynge. All American claimants are represented by him. He confers with the private claimants and their counsel.

Senator BAYARD. And he was the officer of the commission who arranged for these stipulations?

Mr. PARKER. He was the officer of the American Government practicing before the commission who entered into those stipulations, conferring with the private claimants and their counsel.

Senator BAYARD. Was his agreement to a stipulation binding upon the claimant, or, if the claimant objected to the stipulation, did he have a right to appeal over Mr. Bonynge's head?

Mr. PARKER. As a matter of fact, Mr. Bonynge advises me that he has never made an agreed stipulation without the consent of the claimant. If the claimant objects to the stipulation proposed by him, he submits the case without any stipulation.

Senator BAYARD. He would have a right of appeal to your commission?

Mr. PARKER. No; Mr. Bonynge would not stipulate the facts if the claimant objected. The commission would simply take the record and examine it without any stipulation as to the facts. The stipulation is simply made in the interest of expediting the work of the commission; but Mr. Bonynge, representing the American Government, would not make a stipulation of facts that is not approved by the private claimant, and has never done so. A number of cases, of course, are submitted to the commission where the facts are not stipulated.

In such cases the members of the commission have to take the whole record and examine it. But let me emphasize this point: The stipulations of the agents, of course, are not binding on the commission. Very frequently the national commissioners call for additional evidence and examine the record, if they are not satisfied with the stipulation, in order to see whether or not the facts are correctly stipulated. In the majority of cases they can rely on the stipulation of the agents. The American agent is a sworn officer of the American Government. The German agent is a sworn officer of the German Government.

The CHAIRMAN. Who is the agent of Germany?

Mr. PARKER. The agent of Germany before the commission is Doctor von Lewinski, a gentleman who was here with Doctor Kiesselsbach.

Senator BAYARD. Do you happen to know, sir, who appointed Mr. Bonynge as the agent of the American claimants?

Mr. PARKER. President Harding.

Senator BAYARD. He was appointed by the President?

Mr. PARKER. Yes.

Perhaps I should add that under the agreement under which the commission is constituted it was not contemplated that the umpire should have any voice in the decision of cases before the commission save in the event of disagreement of the two commissioners, in which event they would then certify the case to the umpire for decision. While it was not incumbent upon the umpire to assume that burden, in the interest of expediting the work the umpire has always sat with the two commissioners and has heard every case that has been submitted. There have been only two instances since the constitution of the commission in which the umpire has not been present at the meetings of the commission, and then only routine matters were transacted.

The CHAIRMAN. Will you give the full name of each member of the commission and their addresses, if you remember them?

Mr. PARKER. Yes. The German commissioner is Dr. Wilhelm Kiesselsbach, of Hamburg, Germany. The American commissioner is Chandler P. Anderson, of Washington, who, as you know, has had a very long and varied experience in international law.

The CHAIRMAN. I know him well.

Mr. PARKER (continuing). And was the counsellor of the State Department when Mr. Knox was Secretary of State. I am the umpire—Edwin B. Parker.

The commission sits, then, as a court, under the chairmanship of the umpire, and hears cases. While in cases that are not certified

to the umpire the umpire has no voice in the decision, that course of procedure results in there being no necessity for reargument if the two commissioners are not able to agree on the decision; and in many instances the umpire is able, by conferring with the commissioners, to reconcile differences, so that there is no necessity for certifying the case to the umpire for his decision.

In all of the administrative opinions laying down the principles which govern the decision of the cases the umpire has either written the opinion—in the majority of the cases the umpire has prepared the opinion or has concurred in it.

Senator BAYARD. In that connection, may I ask you a question? There has been a protest filed, as you know, in the House, in the hearings over there, by Zimmerman & Forshay, brokers in Philadelphia, in regard to the handling by your commission of certain claims of owners of German bonds which were purchased prior to the outbreak of the war, or before we got into the World War. Was the question as to whether or not they failed to exercise a rule placed upon them by the commission to produce certain evidence decided by you as the umpire, or was that decided by the commission without your vote?

Mr. PARKER. I do not know what particular Zimmerman & Forshay case you refer to. There is in the hands of the American agent a claim of Zimmerman & Forshay against Germany which has not been passed upon by the commission, and my information is that since the decision of the Supreme Court of the United States in the Humphreys case the other day they have determined to press that claim before the commission.

Senator BAYARD. The reason I asked the question is that I have same correspondence here, and I should like to put some of it in the record, briefly.

It has been brought to my attention that certain owners of German bonds which were purchased prior to the outbreak of the war, and of course prior to the time of our getting into the war, now claim that the commission has ruled, up to date, that unless they can produce evidence of their having made certain overt acts to obtain information or to file requisitions in Germany as to the return of their property, they are out of court. Their complaint is that they were unable to do that by reason of the fact that had they done it they would have broken our laws, which forbade their doing so.

Senator EDGE. They would have violated the trading with the enemy act.

Senator BAYARD. Yes; and in that connection, at this time—I do not want to embarrass the commissioner—I should like to place in evidence a letter from Ferdinand Meyer and a letter from Leopold Zimmerman, as typifying what I had in mind. If you would like to read these letters, sir, I should be very glad to have you do so.

Mr. PARKER. No.

Senator BAYARD. I merely want to typify what I had in mind.

Mr. PARKER. Do not be afraid of embarrassing me.

The CHAIRMAN. The letters will go in the record at this point.

(The letters referred to are as follows:)

BALTIMORE, Md., January 17, 1927.

HON. THOMAS F. BAYARD,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR BAYARD: I beg to acknowledge receipt of your letter of the 18th instant.

You have asked me for a complete history of my claim against Germany, and I am complying with your request. On October 4, 1915, I purchased, through the firm of Zimmerman & Forshay of New York, certain German Government bonds that had been issued prior to that time. The bonds paid 5 per cent interest and for marks 20,000 of them I paid \$4,154 at the rate of 21 cents per mark, which was within three points of par.

Zimmerman & Forshay kept the bonds for me with their agency in Berlin, Germany. Some years later when it looked as if the United States was going to declare war against Germany I understand that the firm of Zimmerman & Forshay instructed their agent in Berlin to take the bonds out of Germany and sell them in a neutral country, and this is confirmed according to a cable in the possession of the Department of State from Ambassador Page at London.

However, the German Government would not allow the bonds to be removed from Germany, and shortly after we declared war, the securities were turned over to the German custodian of enemy property and they were tied up by reason of Germany's war measures until January, 1920. In the meantime the bonds had become practically worthless.

During the early part of 1918 Zimmerman & Forshay gave an itemized statement to the Department of State of all their customers' bonds which had been sequestrated by Germany. Again in 1919 that firm reported to the Department of State that over 22,000,000 marks of German securities belonging to over 5,000 of their customers in the United States were tied up in Germany so that they could not be disposed of or taken out of Germany, and Zimmerman & Forshay specifically notified the department that they were filing a claim against Germany with the Department of State. All of these bonds and 5,000 customers had acquired them somewhere about the time I bought them.

It seems that because each and every customer did not ratify the act of Zimmerman & Forshay in notifying the Department of State within six months that only about a dozen customers have been able to have the Mixed Claims Commission take jurisdiction of the claims, and even they are having great difficulty in recovering their losses on account of certain harsh rules of procedure which makes it incumbent upon a claimant to prove that he tried to remove his bonds from Germany and was prevented from doing so by reason of Germany's war measures. I understand that these war measures did not become effective against the United States until after we entered the war. As you know it is unlawful to carry on correspondence with any enemy, I do not see why I or anyone else should have to violate the laws of our country to recover losses caused by Germany. I can't believe that the United States Senate intended any such thing when it ratified our treaty with Germany.

Our bankers in this country who had mark currency upon deposit in German banks that was acquired after I had bought my bonds, and who had been able to buy marks as low as 17 cents and put them in a German bank, have been awarded 16 cents per mark and do not have to prove that they tried to get their property out of Germany. This seems to be an unfair discrimination between holders of bonds and owners of mark currency that might have been bought for speculative reasons.

The coupons that matured during the war were cashed by the agent of Zimmerman & Forshay in Germany and credited to the account of that firm by a German bank. Now, just because Zimmerman & Forshay failed by fact of the way Germany acted the receiver claims that he is entitled to my property for the benefit of post-war creditors of Zimmerman & Forshay. I am, therefore, deprived of my interest and lost practically all of the principal, and the alien property bill gives that receiver the right to my property which I claim is an injustice.

I can not understand why the Mixed Claims Commission can make an award in favor of a receiver of a firm who did not sustain the loss. I was the owner of bonds and coupons for eight years before the failure, and why the receiver is entitled to the proceeds of my coupons I am unable to see the equity of it.

German owners of vessels are going to be compensated upon the basis of the "fair value" of their property at the time it was taken over by our Government. Owners of radio stations got the "fair value" and, in addition, the bill provides a remedy for such owners if the condition of their property is not just as good to-day as when it was taken over.

German claimants have no six months governing their claims. They do not have to prove a demand to receive compensation. They are well taken care of if the condition of their property is of less value when they get it. But the American citizen is denied all of these advantages, and why our own Government permits it, I am at loss to understand.

I am indeed very grateful for your interest in this matter.

Respectfully yours,

FERDINAND MEYER.

LETTER FROM ZIMMERMANN & FORSHAY, NEW YORK

NOVEMBER, 12, 1928.

Hon. WILLIAM R. GREEN.

*Chairman Committee on Ways and Means,
House of Representatives, Washington, D. C.*

MY DEAR CONGRESSMAN: At the request of some of your constituents who were customers of our firm long before the United States declared war against Germany, and who had property over there which became practically worthless by reason of the war, I submit the following for your consideration:

During our 50 years of international banking, chiefly in German securities since 1872, we developed amongst the residents of the United States a large clientele numbering over 10,000 persons who had acquired German securities through our firm for which they had paid in excess of \$5,000,000 before we entered the World War.

Some of these German securities were issued before we began business in 1872, and others from that time on which included various issues of the German Government, its States and municipalities, industries, and banks.

Many of these American-owned securities remained upon deposit with various banks located in Germany, and at the time of our declaration of war against Germany, April 6, 1917, there were upon deposit in the Deutsche Bank, Berlin, Germany, 20,877,400 marks of such securities with a pre-war value of about \$5,000,000, the property of our customers living in the United States.

Soon after we declared war against Germany that Government began taking, on August 9, 1917, economic measures against American-owned property located in Germany. Such measures were vigorously enforced against that property and they were made most effective by an order of the Imperial Chancellor of November 10, 1917, entitled "Economic measures of retaliation against the United States of America."

The order of retaliation provided that all American-owned property in Germany was to be reported to the German alien property custodian, that no debts owing to residents of the United States should be paid, and furthermore that no securities were to be exempted from the effects of this order.

Soon after the signing of the armistice my firm requested the Department of State to ascertain the status of our customers' securities which were being withheld from them through the act of the Government of Germany. I learned that the German alien property custodian had subjected to his measures of administration the 20,877,400 marks of securities owned by American residents, and that the Deutsche Bank had reported these securities to the German custodian as the property of our firm's customers in the United States.

On February 3, 1919, my firm filed with the American Alien Property Custodian notice of claim in behalf of our customers against the property of the Deutsche Bank, which was held by the American custodian. This claim was filed in accordance with the provisions of section 9 of the trading with the enemy act, which provided for the payment of debts out of the property of the debtor. A list was transmitted to the custodian disclosing the names and addresses of about 7,000 American residents, whose securities in the amount of 20,877,400 marks were being withheld from them in Germany.

One of the members of my firm conferred with the officials of the Department of State about his going to Germany to recover our customers' property, and about the time he was ready to make the trip the War Trade Board on July 14, 1919, pointed out that correspondence could be had with Germany. My

firm then sent a cable to the Deutsche Bank demanding the possession of our customers' property. The bank replied that it could not comply with our request.

A few months later I arrived in Germany for the sole purpose of getting the securities. I conferred with the officials of the Deutsche Bank, Berlin, and was informed that the 20,877,400 marks of American-owned securities had been reported to the German alien property custodian, and they had been placed under that German official's control. I was told that the securities would not be released until the German custodian had given his permission.

After spending some time in Germany in conferring with the officials of the German custodian's office and the Deutsche Bank, I was able to secure the release of the securities from the control of the German Government. In the meantime, the mark currency in which the securities were payable had depreciated to the point where it was only worth a few cents. Please bear in mind that the securities were bought before the war, paid for on the basis of the pre-war rate of exchange in dollars.

Several years ago my firm brought suit against the Deutsche Bank with respect to our own individual claim, and the German orders entitled "Measures of economic retaliation against the United States" were submitted in the form of exhibits by the defendant. A defense witness testified that the orders had been certified to by the German Embassy at Washington as being true and correct.

In a sworn affidavit executed by the Deutsche Bank, signed by an official thereof, the original of which is in possession of the German agent associated with the Mixed Claims Commission, reference is made to our customers' bonds being under the control of the German Government, and I now quote from the affidavit:

"that after their release by the Treuhander the bonds were delivered."

The Treuhander referred to is the official designation of the German alien property custodian.

My purpose in writing to you is to assist my customers in recovering the losses they have sustained. It seems that only about a dozen of them gave notice of their losses under the agreement of 1922 creating the Mixed Claims Commission. However, notice of all their claims covering 7,000 customers was given to the American Alien Property Custodian on February 3, 1919, more than three and one-half years before the commission was created.

Those whose cases are pending before the commission are offered two and a fraction cents per mark by the German agent in settlement of their claims. The great bulk of the cases are outside the jurisdiction of the commission because notice of their claims was not filed in time with that commission, but as I have stated, they had all been filed with the American Alien Property Custodian long before the commission existed.

The Mixed Claims Commission on May 7, 1925, prescribed the rules covering the character of proof required to obtain a recovery of 16 cents per mark with respect to American-owned securities located in Germany during the war period. These rules provide that the burden of proof is on the American claimant to show that from all the facts and circumstances in reference to the purchase of the bonds, it could be demonstrated that they would have withdrawn their bonds from Germany except for that exceptional war measure on the part of Germany.

I understand that out of the thousands of American owners of German Government securities purchased before we entered the war that in only two or three cases has the Mixed Claims Commission allowed a recovery of 16 cents per mark upon the principal of the loan.

No such character of proof is required by those whose claims have been allowed covering deposits of mark currency in German banks. It seems so unfortunate for these thousands of American residents, owners of German securities, that they could not recover their loans by merely submitting the same measure of proof as is provided for in bank deposits of mark currency.

It appears that the Mixed Claims Commission lacks due legislative authority to provide for the return of the money borrowed from American citizens before the outbreak of the war by the Government of Germany and its nationals. The American holders of German securities therefore must have recourse against their German debtors under the provisions of the trading with the enemy act. According to section 9 of that act it is provided that debts owing before and on October 6, 1917, are to be paid out of the debtors' property in the possession of the Alien Property Custodian.

A right has been given by Congress to American creditors, but the remedy is not complete because of the lack of legislation defining the rate of exchange in which mark debts should be paid. On August 17, 1926, the Alien Property Custodian, Senator Sutherland, addressed a letter to Chairman Porter of the House Committee on Foreign Affairs, in which the custodian said in part:

"I have much sympathy for those of our people who suffered from the debasement of the mark currency, and should be glad if it were possible to frame some legislation that would assure settlement of such claims on the valuation of the mark as of date of contract. In so far as the proposed amendment serves to accomplish this purpose, I feel that it is commendable."

I want you to know that many of these American owners of German securities are of an elderly age now and have become to a certain extent dependent upon their relatives. Many of them call upon me frequently and tell me a pitiful story of the hardships they have suffered by reason of the German Government having repudiated the loans which it borrowed that represented the life savings of the owners of these securities.

I will appreciate very much having this letter inserted in the records of the hearings relative to the payment of awards by the Mixed Claims Commission and return of German property.

Very truly yours,

LEOPOLD ZIMMERMANN.

Senator McLEAN. Did these bonds mature before October, 1916?

Senator BAYARD. These bonds were bought before 1914, even.

Senator McLEAN. When did they mature—before October, 1916, when the German Government requisitioned all securities?

Senator BAYARD. The actual status of these bonds I am unable to tell you, Senator, or the varying claims.

Senator McLEAN. You do not know when they were due?

Senator BAYARD. No.

Senator REED of Pennsylvania. Many of them are not due yet.

Senator BAYARD. Some of them; and I think you will find that stated in this letter of Mr. Meyer, which I quoted. It is a pretty comprehensive letter. Mr. Meyer, of Baltimore, took up the matter with me.

Senator McLEAN. I was wondering whether the cases which you presented to the committee are like those involved in the resolution which was offered by Senator Copeland.

Senator BAYARD. I think some of the bonds may have matured, but I think in the case of a great many of them their term has yet to run.

The CHAIRMAN. Do the parties owning those bonds claim that they have a just claim on bonds that had not matured as well as bonds that had matured before October, 1916?

Senator McLEAN. That seems to me the important point.

The CHAIRMAN. You recognize, do you not, that there is a difference between the bonds, depending upon whether they matured before October 1, 1916, or whether they matured after that time?

Senator BAYARD. I do not recognize any difference in equity, sir. I think this: If the German Government, by its procedure, prevented the American owner who bought that bond in good faith before the war from realizing upon his property, either principal or interest, I do not care when the bond matured; they have a right under this procedure, under the Berlin treaty, to present their claims.

Mr. PARKER. Yes; and they will receive an award.

Senator BAYARD. But in this particular case and in many of these cases they were unable, because of the terms of the trading with the enemy act, to do something forbidden by an American law which

the commission, as I understand, now undertakes to say they should have done, and therefore their claims are not to be allowed.

Senator EDGE. Is it not true, Mr. Umpire, that the French Government, following exactly the same point with their nationals owning German securities purchased before the war—that is, before 1914, in their case—investigated this thing very carefully, and insisted upon full restitution to their nationals on bonds of that character? That is what I have understood, in a general way.

Senator REED of Pennsylvania. Would we not get to the bottom of this best if we would allow Mr. Parker to go on and tell us just what the commission has done in all these German bond cases?

Senator MCLEAN. I think so.

Senator EDGE. I ask permission also to put in some letters on the same subject.

The CHAIRMAN. They will be inserted in the record.

(The letters are as follows:)

UNITED STATES TRUST CO. OF PATERSON, N. J.,
January 4, 1927.

Hon. WALTER E. EDGE,

Senate Office Building, Washington, D. C.

MY DEAR SENATOR EDGE: Before the outbreak of the war many of our clients in New Jersey purchased German securities through our bank. They have submitted claims for the confiscation of their securities by the Government of Germany with the Department of State in accordance with the provisions of our treaty of peace. Other claims have been filed with the Alien Property Custodian in accordance with the provisions under subdivision E of section 9 of the trading with the enemy act.

As yet, none of the claims have been allowed. The claims filed with the Department of State are predicated upon the action of the Government of Germany in confiscating our customers' bonds which they acquired before the outbreak of the war between the United States and Germany. Being unable to remove their bonds from Germany they were sequestered by reason of Germany's war legislation. When these measures of sequestration were revoked, the mark currency in which the bonds were payable was worth little or nothing.

They are able to prove that because of the act of the Government of Germany it was impossible to dispose of the bonds. Germany's war orders of retaliation against citizens of the United States clearly indicate their purpose of preventing our people from realizing upon their securities during the war period. We quote from the German order of August 9, 1917:

"It shall henceforward be unlawful to make any payments either directly or indirectly to the United States of America, whether in cash or by means of bills or checks, or by transfer, or in any other manner whatsoever, or to remove or transfer money or securities directly or indirectly to the aforementioned country."

The Mixed Claims Commission has ruled, in effect, an American citizen who filed a claim against the Government of Germany, or against its nationals, based upon evidences of indebtedness which came under the control of the German alien property custodian must submit proof that he tried to dispose of his property while the United States was at war with Germany, and thereby put himself in the position of violating the provisions of the laws of the United States known as the trading with the enemy act which prohibited our corresponding with anyone in Germany.

It is inconceivable that the United States Senate intended when it ratified a treaty with Germany giving our citizens a right to recover their losses for the sequestration of their property that it was necessary to prove that the claimant made an effort to carry on correspondence with a German enemy in violation of the law of the United States.

We inclose for your consideration a copy of the Mixed Claims Commission's rules applicable to American-owned bonds, and you will kindly note that, according to paragraph 12, "All American-owned bonds located in German territory on November 10, 1917, will be considered as subjected to an exceptional war measure by the issuance of the decree of that date."

The decree of November 10, 1917, referred to, provided for the reporting of American-owned property through the German custodian of alien property and was entitled "Order of the Imperial chancellor, concerning economic measures of retaliation against the United States of America," and according to section 10 thereof "securities" were included.

These economic measures of retaliation against the United States are of such importance that we take the liberty of submitting the same to you for your careful consideration. The translations were copied from exhibits in a claim of an American citizen against a German national which was certified to by the German embassy at Washington.

German debtors should not be allowed to shield themselves from accounting for the loans they received from American citizens and be permitted to profit at our expense and defeat the rights of American creditors by virtue of Germany's sequestration measures simply because such creditors made no demand for their sequestered property.

We submit that the Senate of the United States should not fail to realize that German debtors have had the benefit and use of American loans which have been converted into material wealth that possesses a far greater replacement cost compared to the time the loans were made. If the debtor located in a foreign country comes over to the United States and borrows American capital, which is not restored to the lender, then it becomes an economic loss to the United States and a profitable gain to the debtors' country.

We understand that the Government of France made a thorough investigation of Germany's sequestration measures with particular reference to French-owned securities that came under the control of the German custodian of enemy property. As a result of the investigation, France decided that its nationals could recover the pre-war value of their securities by simply proving that they were subject to Germany's exceptional war measures.

France took this action in favor of its subjects in accordance with the provisions of the treaty of Versailles which, we have been informed, are applicable to claims of American citizens because, by reference, these provisions were incorporated into our treaty of peace with Germany. We believe that Belgium and some of the other allies have determined upon the same course.

If you will kindly note the rules applicable to the bonds applied by the Mixed Claims Commission to the claim of an American citizen you will readily understand from a reading of paragraph 15 what appears to be a harsh provision.

Whether an exceptional war measure was the proximate cause of the damage will depend on the facts in each particular case. In considering these facts the following principle will be observed:

"(a) If the claimant took appropriate steps to sell or exchange the bonds in Germany and was prevented from accomplishing this by an exceptional war measure, then the exceptional war measure will be regarded as the proximate cause of the damage sustained on account of depreciation in the value of such bonds."

In interpreting the above provision the German agent associated with the Mixed Claims Commission takes a position which has been confirmed by the commission that an American citizen must prove that he, sometime subsequent to November 10, 1917, made an effort to dispose of his bonds. Please bear in mind that our trading with the enemy act was in effect at that time and prevented an American citizen from corresponding directly or indirectly with anyone in Germany.

Surely the United States Senate does not concur in this interpretation of its approval of the treaty with Germany. The right of recovery for losses sustained by the German Government should not be made contingent upon American citizens' violations of any of our laws. This would be a most dangerous precedent for our country to establish.

We respectfully direct your attention to the following rule of the commission:

"(b) The exceptional war measure will be established as the proximate cause of the damage sustained on account of the depreciation in the value of such bonds that may be proven by the evidence in any particular case, if it appears that from all the facts and circumstances in such case the reasonable inference to be drawn therefrom is that the claimant would have withdrawn his bonds from Germany for the purpose of sale or exchange had he not been prevented from doing so by such exceptional war measures."

The exceptional war measures referred to became effective November 10, 1917. It provided for the reporting of American-owned securities located in Germany and prohibited their withdrawal from that country as well as the

payment of any debts owing to American citizens. Furthermore, Germany's retaliation against our people prohibited the sale of American-owned securities.

Now, according to rule "B" they must disclose facts and circumstances from which a reasonable inference must be drawn that our customers would have withdrawn their bonds from Germany if they had not been prevented by that Government. It is utterly impossible to produce any such proof, and we do not know of a single case presented to the commission where any claimant has been able to produce such proof as is required by rule "B."

Any over act of the part of our customers which would conform to the proof acquired by rule "B" would have caused them to have been subjected to punishment in accordance with our provisions of the trading with the enemy act. We can not reconcile the rules of the commission with that act.

So far as the remainder of the rules of the commission are concerned our customers' claims can be readily proved, but we are absolutely unable to submit proof of our customers breaking any of the laws of our country.

It has come to our attention that Senator Copeland submitted an amendment to the alien property bill which is not before your committee for consideration, and such amendment makes Germany liable for the sequestration of American-owned securities. We are informed that this amendment does not conflict with the decision of the Mixed Claims Commission but is merely declaratory of our Senate's action in protecting the interests of American citizens. The decisions of the Mixed Claims Commission are predicated on claims for debasement of currency, whereas Senator Copeland's amendment is based upon Germany's "Economic measures of retaliation against the United States," and harmonizes with the policies of our own Government in restoring German property which we took over.

Yours very truly,

ROBT. H. FORDYCE,
Chairman of the Board.

CARTERET, N. J., December 22, 1926.

Hon. WALTER E. EDGE,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: I have sustained a loss of about \$2,500 because the German Government confiscated my property. It was acquired before the outbreak of the war between the United States and Germany and came under the control of the German Government because of its war legislation and was not restored to me until after the war was over when it was practically worthless.

Bills in Congress relative to payment of awards by the Mixed Claims Commissioned and return of German property have a provision in them amending subsection E of section 9 of the trading with the enemy act which provides a remedy in favor of American citizens to whom debts were owing by German debtors on October 6, 1917.

Bills now pending in Congress provide that notice or application by a creditor must be given before the passage of such bills. They should be amended so as to define the liability of German debtors under the above provisions of the trading with the enemy act. Ex-Secretary of State Hughes and Hon. John W. Davis have cases pending in the United States Supreme Court in which they both contend that German debtors must pay their American creditors according to the pre-war rate of exchange, and not in worthless mark currency.

When Congress enacted the Winslow Act it gave a remedy to American creditors, but failed to define the rate of exchange in which debts should be paid. Due to this inadvertence, considerable litigation is now pending, and it seems to me that Congress should eliminate this difficulty as it has done in many other instances involving an unfavorable interpretation of the trading with the enemy act.

Congress has enacted amendments to the trading with the enemy act permitting persons to recover their property taken over by the Alien Property Custodian, and occasion now arises for taking some action to protect our own citizens.

Surely, Congress does not intend to permit German debtors to escape liability in paying their American creditors through the use of worthless mark paper. German debtors now insist under the provisions of the Winslow Act

upon profiting at the expense of American citizens because of the debasement of mark currency.

I respectfully suggest the following amendment be incorporated in a bill by Congress:

"Nor in any event shall a debt be allowed under this section unless it was owing to and not due, or due and not paid in full and owned by the claimant prior to October 6, 1917. That such debt is to be paid according to the exchange with Germany existing at the time it was contracted by a person not an enemy or an ally of an enemy. That the computing of exchange is to be determined by the figures of the Treasury Department in fixing the conversion of the rate of marks into dollars for revenue purposes."

The adoption of the above amendment will serve to accord the same measure of equity and justice to American creditors of Germany and its nationals as that which is given to Germany in the matter of the restoration of their property.

Please do not be confused over the decisions of the Mixed Claims Commission regarding American property located in Germany, as such decisions are based upon actual seizures of American property by the German Government. That Government took good care not to actually seize much American property because it has more at stake in the matter of our seizures of German property. Germany accomplished its purpose of sequestration of American property without actually taking it over by enacting laws which prohibited Americans from taking their property out of Germany, and preventing the payment of debts owing by the Government of Germany and its nationals.

If we are going to restore that which our Government took from Germany and compensate them for their property, I believe the same measure of equity and justice should be meted out to American citizens whose property, rights, and interests were confiscated by reason of Germany's war legislation.

Germany enacted measures of economic retaliation against the property of American citizens located in Germany and its war legislation prohibited me from either disposing of my property or taking it out of Germany until after the war was over.

I understand that some of the German property taken over by our Government represents dollar loans obtained from American citizens who were to receive repayment of their loans in marks from their German debtors. Marks at the time the loans were contracted were equal to 23.8 cents in our money. It is not fair to turn over the dollars to the borrower and let the American creditor suffer the loss.

The Secretary of the Treasury ruled that the Alien Property Custodian was entitled to recover payment of debts owing to German creditors in marks from American debtors on the basis of 18 cents per mark. It is certainly not justice for Germans to collect their debts on such a basis and then be allowed to pay their American creditors in worthless currency.

If the French Government, which has not seen fit to return German property, has granted a right of recovery to its nationals whose property was affected by Germany's war measures similar to the way mine was, I believe it is only right that our own Government should protect the interests of its citizens.

Will you kindly urge some member of the committee which is considering this matter to give this attention to preserving the equities of American creditors in the property of Germans at the time it was taken over by the Alien Property Custodian?

I understand the Alien Property Custodian has recommended remedial legislation by Congress in the form of the amendment above referred to, and I trust you will vote in favor of it.

Very truly yours,

PAUL MARTENS.

Senator EDGE. I imagine every member of the committee has had these letters; but I think Judge Parker should really give the commission's viewpoint, if he understands the proposition presented, as to the opinion of the commission on these securities, without going into detail.

Mr. PARKER. I shall be glad to, Senator.

The Senator referred to the equitable rights of Zimmerman & Forshay. You will readily appreciate the fact—

Senator BAYARD. I beg pardon; when I spoke of them I spoke of the bondholders whom they represent.

Mr. PARKER. Yes. They are speaking for their customers, to whom they distributed these bonds.

The Senators will appreciate the fact that the commission had nothing to do with the making of the treaty of Berlin. It is bound by the terms of the treaty. The treaty is its charter. It can neither add to nor take from the terms of that treaty. If a claim falls within the treaty, it must be dealt with by the commission; and if, in the case of a claim falling within the terms of the treaty, the claimant has been damaged by the act of Germany, an award will be made in favor of the United States on his behalf against Germany. But obviously the Governments themselves have prescribed what Germany shall pay for, in what classes of claims Germany shall be held financially liable. The commission has not the power to consider whether or not the treaty should have provided something that it does not provide.

Senator JONES of New Mexico. May I interpose a question? Are the provisions of the treaty of Berlin, which incorporates certain provisions of the treaty of Versailles, circumscribed or curtailed in any manner by the agreement which constituted the commission?

Mr. PARKER. None whatever. The commission has so explicitly held that the executive agreement under which the commission is constituted could neither add to nor take from the treaty. That treaty is the commission's charter; and while we might look to the terms of the agreement as throwing some light upon the construction placed upon the treaty by the executive departments of the two Governments, we are not bound by that. We may not agree with that construction. It is the treaty that speaks, and the treaty that binds the commission.

Senator JONES of New Mexico. And you have construed the agreement which provided for the organization of this commission merely as the creation of a commission to carry out the provisions of the treaty of Berlin, and not limited in any respect by the provisions of the agreement constituting the commission?

Mr. PARKER. The agreement constituting the commission can not affect the rights of the parties, which are fixed by the treaty. It can affect the powers and jurisdiction of the commission which is constituted under it.

In a decision reported on pages 186 and 187 of the printed decisions and opinions of the commission, the umpire, in dealing with Germany's contractual obligations arising under the treaty of Berlin, held:

These contractual obligations, which are in no sense conditional or contingent, became absolute when, but not until, the treaty became effective. They embrace all claims which were impressed with American nationality both on the date when the loss, damage, or injury occurred and at the time the treaty became effective and which also possessed the other prerequisites to bring them within the treaty provisions. By this agreement Germany is bound. The rights thus fixed constitute property. * * * The American nationals who acquired rights under this treaty are without a remedy to enforce them save through the United States. As a part of the means of supplying that remedy this commission was by agreement created as the forum for determining the amount of Germany's obligations under the treaty. That agreement neither added to nor subtracted from the rights or the obligations fixed by the treaty but clothed this commission with jurisdiction over all claims based on such

rights and obligations. The treaty does not attempt to deal with rules of procedure or of practice or with the forum for determining or the remedy to be pursued in enforcing the rights and obligations arising thereunder.

Senator EDGE. Let me ask you a direct question right there, and see if you understand that as presented by one of my correspondents.

Your commission, in promulgating your rules or regulations covering their claims on such securities bought before the war, made this provision, as I understand:

Whether an exceptional war measure was the proximate cause of the damage will depend on the facts in each particular case. In considering these facts the following principle will be observed:

(a) If the claimant took appropriate steps to sell or exchange the bonds in Germany and was prevented from accomplishing this by an exceptional war measure, then the exceptional war measure will be regarded as the proximate cause of the damage sustained on account of depreciation in the value of such bonds.

In interpreting that provision, as I understand, your commission have taken the position that the holder of the bonds must prove that he made a direct offer of sale previous to 1917; and at that time he could not make a direct offer of sale, because of the trading with the enemy act. Is that correct?

Mr. PARKER. No, Senator; it is not.

Senator EDGE. That is what I wanted to find out.

Mr. PARKER. The letter that you are reading refers to subdivision (e) of article 297 of the treaty of Versailles, which was read into the treaty of Berlin. That provision provides that the nationals of the allied and associated powers shall be entitled to compensation in respect of damage or injury inflicted upon their property, rights, or interests, including any company or association in which they are interested, in German territory as it existed on August 1, 1914, by the application either of the exception war measures or measures of transfer mentioned and defined in the treaty.

Senator BAYARD. And that would include any action taken by the German Government in regard to the bonds which we are now talking about?

Mr. PARKER. It would. It provides for compensation for damages, as contradistinguished from a debt.

As you know, the treaty of Versailles is divided into two major groups so far as concerns the liability of Germany—the reparations provisions and the economic provisions of the treaty. This is found in the economic provisions of the treaty. The principles governing the liability of Germany in the economic provisions of the treaty are essentially different from those arising in the reparations provisions of the treaty.

May I, in order to make the position clear, just very briefly—I do not want to take up time in going into all of these questions—draw that distinction between these two major divisions of the treaty?

When war was declared between the belligerent countries, of course, all commercial and economic intercourse was disrupted. German exceptional war measures or measures of transfer necessarily operate in Germany, in territory where German decrees and laws were effective. To the extent that those exceptional war measures operated on American property to the damage of American nationals, Germany is liable.

Senator BAYARD. Regardless of either phase, the economic or the reparations propositions?

Mr. PARKER. Germany's liability in a case of that kind arises under the economic provisions of the treaty. If these bonds were held by Germany, if they were taken into the possession of the Treuhänder—which was the alien property custodian of Germany—and could not be withdrawn, to the damage of the American citizen, he is entitled to recover to the extent of that damage.

The CHAIRMAN. But supposing the bond had not been seized by Germany, but was held in the United States, and there was no chance of realizing on the bond: That is a different case, is it not?

Mr. PARKER. Held in the United States?

The CHAIRMAN. Held in the United States by United States citizens, with no chance whatever of having it redeemed when it fell due, on account of the war with Germany: What have you held in such a case?

Mr. PARKER. In such a case as that, obviously, no act of Germany has affected that bond, unless it matured.

The CHAIRMAN. Suppose it had not matured. I should have added that, because we all recognize the fact that if it matured—

Mr. PARKER. Then it became a debt of Germany.

The CHAIRMAN. Then it became a debt of Germany.

Mr. PARKER. And the claimant would be entitled to recover the amount of that debt.

The CHAIRMAN. That is as I understood it.

Mr. PARKER. Yes; but if the bond had not matured, and no act of Germany affected that bond, then Germany, under the treaty, could not be held liable.

Senator EDGE. Does not that place the American security holder in an absolutely impossible position? He could not offer his bonds for sale; he could not trade or deal with an enemy country, and he was helpless here because of the war; and yet, as I follow your ruling or interpretation, he has absolutely no redress.

Mr. PARKER. In the hypothetical case stated by the chairman, why could he not deal in that bond? Why could he not sell the bond?

The CHAIRMAN. Sell it here, or sell it at any place in the world.

Senator EDGE. Of course, if he sold the bond, perhaps it would be of no value whatever.

The CHAIRMAN. That is exactly it.

Senator MCLEAN. Suppose I state the case that is presented in this communication:

As an example, we will take the case of A, a German national, who issued bonds payable in marks and sold them in 1910 to B, an American citizen residing in the United States. The proceeds of the bonds were used by A—

That is, in Germany—

to influence his property holdings in the United States. B left his bonds upon deposit with a bank in Germany so that the coupons could be presented to the main office of the debtor, A. In August, 1917, the German Government sequestered B's bonds. Later, when our trading with the enemy act was passed, the custodian seized A's property in the United States. A's property was partially created out of the proceeds of the bonds sold to B. Now, under the provisions of the bill which passed the House, B can not recover the debt owing to him by A; and the result is that A will get his property returned to him and make a handsome profit at B's expense, because the marks in which the debt was owing have become worthless.

The CHAIRMAN. He had to take his chances.

Mr. PARKER. Suppose it had been the other way around?

Senator McLEAN. That is all right, but take it this way around to start with.

Senator EDGE. It seems to me the poor American in all these matters had to take his chances. He seems to be the last person to be considered.

The CHAIRMAN. Senator, do you see any difference between this case and where a man dealt in marks? There is not any difference at all, in my opinion.

Senator EDGE. Yes; I see some difference.

The CHAIRMAN. Billions of marks were dealt in. Americans bought them on speculation.

Senator EDGE. The man dealing in marks was merely speculating on the market, of course.

The CHAIRMAN. So was the bondholder. The bond was an investment, the same as the investment in the mark.

Senator McLEAN. But the value of the mark has been fixed in the claims that have been allowed, as I understand, at 16 cents; and I imagine that that valuation would be satisfactory to these claimants if they could get anything.

The CHAIRMAN. Oh, certainly.

Mr. PARKER. The American claimants, taking the American nationals as a whole, I think you will find, Senator, have been pretty well cared for in this treaty. Under the treaty it is perfectly plain, and the commission has so held, that Germany is not liable for all of the consequences of the war. Of course, that is obvious, that she could not be. To the extent that Germany's act, either through the seizure of property in whatever form or the seizure of bonds by the Treuhänder, has resulted in damage to the American citizen, that citizen is entitled to a recovery.

The CHAIRMAN. Or destruction of property?

Mr. PARKER. Or destruction of property, or the requisition of property, or the destruction of life, or damage or injury to the person—Germany is liable; but where an American citizen happened to hold, in this country or in Germany, German securities that had not matured, and that, when they mature, may or may not be of value, and Germany did nothing to touch or affect those securities, then, under the treaty, Germany is not liable.

Senator EDGE. Then, Mr. Parker, why did you provide this regulation that I read? If the claimant took appropriate steps to sell or exchange the bonds, they had not matured, naturally; then you would consider that in considering the claim they had against Germany. You must have admitted that such American claimants had some claim, because you are qualifying to find out whether they tried in anyway to dispose of their holdings.

The CHAIRMAN. They could have disposed of their bonds, the same—

Senator EDGE. Well, then, they come back and say they could not dispose of them without violating the law.

The CHAIRMAN. They could have sold them just the same as the German bonds were sold.

Senator EDGE. But the point I make is that the commission must have recognized the justice of the situation, or they would not have provided this particular method that I have read twice.

Mr. PARKER. If those bonds were affected by exceptional war measures of Germany to the damage of the American citizen, he is entitled to an award. That is what that rule says.

Senator BAYARD. Notwithstanding his inability to conform to the rule of the commission in regard to making a demand upon the German Government on account of the trading with the enemy act?

Mr. PARKER. I did not catch that.

Senator BAYARD. I say, then, notwithstanding the fact that he has been prevented by the trading with the enemy act from making his demand, your commission apparently will withhold an award because he can not prove that he made a demand?

Mr. PARKER. No. All he has to prove is that some act of Germany, quite independent of the American trading with the enemy act, operated on his securities and prevented his—

Senator MCLEAN. Securities due and not payable?

Mr. PARKER. Securities due and not payable.

The CHAIRMAN. Certainly; everybody recognizes that.

Senator BAYARD. Would the commission go so far as to say that the act of Germany, having provoked the war with the United States, and further having provoked the passage of the trading with the enemy act, was such an act on the part of the German Government as would give him a day in court?

Mr. PARKER. Manifestly; no. That would be holding Germany liable for all of the consequences of the war.

Senator BAYARD. But assuming that they were responsible in equity for the claim that he sets up as the owner of these bonds, you deny him his day in court because he can not physically prove that he did something at a time that his own Government forbade him to do it.

Mr. PARKER. No; not at all. The action of his own Government in passing the trading with the enemy act is not material at all.

The CHAIRMAN. I can not see that it is material.

Mr. PARKER. As a matter of fact, if the exceptional war measures of Germany had not operated on the property, it may well be that his own Government would have prevented his getting possession of those bonds; but, I say, that would not prevent his asserting a claim against Germany. If the act of the German Government operated on his security to his disadvantage, he has a claim.

Senator EDGE. But the act of our own Government, while unfortunate, does not give him a claim against Germany. That is your contention?

Mr. PARKER. No.

The CHAIRMAN. I can not see how it is possible.

Senator EDGE. Yet this American claimant still thinks he has a case, when his own Government makes it impossible.

Mr. PARKER. He probably has a case against his own Government, as the Senator would say, an equitable case.

The CHAIRMAN. A moral case.

Mr. PARKER. But, of course, he has no legal demand against his own Government or against Germany unless you hold Germany liable for all the consequences of the war. Some of the Senators, or all of them, had their income taxes very substantially increased on account

of the war. You may say that if Germany had not provoked the war you would not have had your income taxes increased; you would not have had to pay excess railroad fare on the railroads during the Government war administration of the railroads, and what not.

The CHAIRMAN. The excess cost of living.

Mr. PARKER. Yes.

Senator JONES of New Mexico. In other words, Mr. Umpire, your contention is that such claims do not fall within the provisions of the Berlin treaty?

Mr. PARKER. Yes.

Senator JONES of New Mexico. Which incorporated the provisions of the Versailles treaty, and that your commission is limited to the allowance of claims specifically provided for in the Versailles treaty?

Mr. PARKER. In the Berlin treaty.

Senator JONES of New Mexico. In the Berlin treaty, which incorporated the Versailles treaty?

Mr. PARKER. That is not the contention, Senator; it is the decision.

Senator JONES of New Mexico. Pardon me for using the word "contention."

The CHAIRMAN. The decision of what—the commission?

Mr. PARKER. It is the decision of the Mixed Claims Commission.

Senator McLEAN. What course has the commission followed with regard to claims that may not have been filed with the commission within the six months' limitation but that were filed with the Alien Property Custodian or the Secretary of State?

Mr. PARKER. If the German Government had notice of those claims, the commission has jurisdiction.

Senator McLEAN. No; but the commission fixed the six months' limitation.

Mr. PARKER. No; the Governments fixed it.

Senator McLEAN. Well, the Governments fixed it. My information is that some claims were not filed with you, but were filed with the Alien Property Custodian or the Secretary of State. What has been the course of your commission with regard to the consideration of those claims? That is, if anybody has failed to file a claim with you or with the commission within the six months, but has filed it with the Alien Property Custodian, do you entertain it?

Mr. PARKER. The agreement under which the commission is constituted provides in substance that the Government of Germany should, within a period of six months from the first meeting of the commission, have notice of all claims against her to be presented to the commission. The obvious purpose of this agreement was to give Germany notice of the claims she would be called upon to defend. It was of paramount importance that all claims or controversies of every nature growing out of the war between the Government of the United States and the Government of Germany should be speedily disposed of. In a broad sense all of the claims to be presented to the commission constituted a single case against Germany on approximately 13,000 counts. Germany was the sole defendant. The United States was the claimant in its own behalf and on behalf of designated nationals. In order expeditiously to hear and dispose of this case against Germany it was to the interest of both Governments and to the claimants that Germany should, within a reasonable time, know the case which she was called upon to prepare and defend. The

two Governments agreed that Germany must have notice within six months from the date of the first meeting of the commission of every claim that would be presented to the commission against her.

Senator MCLEAN. Then I understand that your ruling excludes all claims that were not filed within that six months?

Mr. PARKER. Not filed, no; but of which notice was not given to Germany.

Senator MCLEAN. Or notice given to Germany?

Mr. PARKER. Yes. As a matter of fact, claims were in the hands of the American agent or in the hands of the State Department, and formal notice was given to Germany of the claims that would be presented against her.

The CHAIRMAN. Was the formal notice given to Germany of claims that were filed with the Alien Property Custodian?

Mr. PARKER. It was the task of the Department of State to cause all claims of American nationals against Germany to be assembled and lodged with the American agent. Germany had notice of every claim so lodged prior to the expiration of the six-months' period. I am informed that the State Department gave out through the usual channels press reports and through the press broadcast to all claimants notice of the agreement that Germany must have notice within the six-months' period of all claims to be presented to the commission. In addition to these press notices, the Department of State or the American agent wrote letters, sent telegrams, or otherwise communicated to every American national that had at any time since the outbreak of the World War the latter part of July, 1914, given the State Department any inkling of a desire to assert a claim against Germany.

The CHAIRMAN. Then, there was no claim that was filed with the State Department or filed with the Alien Property Custodian but that Germany was notified of; and if Germany was notified of those claims, your commission will undertake to decide them?

Mr. PARKER. Yes.

Senator MCLEAN. That is, all claims that were received by the Alien Property Custodian or by the Secretary of State within the six-months' period?

The CHAIRMAN. Of which Germany had notice.

Senator MCLEAN. Now, I understand that certain claims have been presented to the Alien Property Custodian since the expiration of the six months' limitation. Those you exclude?

Mr. PARKER. To the Alien Property Custodian, claims against Germany? Why would a claim against Germany be presented to the Alien Property Custodian?

Senator MCLEAN. Claims for economic damages, either against this Government or the German Government; that is, claims resulting from the war.

Mr. PARKER. But I can not conceive, Senator, why a claim of an American national against the Government of Germany would be presented to the Alien Property Custodian, save by suit under the trading with the enemy act.

Senator JONES of New Mexico. A number were presented, Mr. Parker, so I am advised. They lodged them there rather than with the Secretary of State.

Senator MCLEAN. That is my information. I do not know.

Senator JONES of New Mexico. It is mine, too.

The CHAIRMAN. Mr. Parker, what action is your commission going to take based on the decision of the Supreme Court in these one-dollar bonds? Have you considered it at all? In other words, there are claims against Germany filed with the Alien Property Custodian on these one-dollar bonds. What action will you take upon them, seeing that the Supreme Court of the United States held that the claim was good against Germany? Do you know how many of them there were?

Mr. PARKER. You refer to German treasury notes that had matured?

The CHAIRMAN. That had matured prior to the war, and had not been paid, and no demand made for payment.

Mr. PARKER. They constitute debts of Germany provable before the commission.

Senator REED of Pennsylvania. Many of those claims have been reduced to judgments, and executions issued against the funds in the hands of the Alien Property Custodian, and that has exhausted the fund so far as it is known to be ascribable to the German Government, as I understand.

I will be glad, after examining the records of the commission, to file with the committee a statement with respect to claims before the commission of American nationals against Germany based on the German treasury notes to which you refer.

Senator BAXYARD. In regard to the filing of these claims, Judge Parker, did your commission receive claims that were filed either with the Alien Property Custodian or with the Department of State as though they were filed with you under the terms of the creation of this Mixed Claims Commission; or did you require them to be filed with your commission as such, and *de novo*?

Mr. PARKER. The claims were heard by the commission, by the tribunal as a judicial tribunal, when they were presented. If they were not timely presented, and the German agent interposed an objection of limitation, if Germany did not have notice within the six months' period, that objection was sustained.

I have the impression—the commission does not judicially know—that the German Government has not raised the bar of limitation in any case that was actually filed with the Secretary of State or any agency of the United States Government and of which through inadvertence the German Government was not given notice. By the terms of the agreement between the two Governments under which this commission was constituted, Germany could have interposed what was in effect a plea of limitation against any particular claim. She could in effect have said to the commission, "This Government had no notice of this claim within the six months' period and hence it is not one which, under the terms of the protocol creating the commission, it has the power to hear and determine." In such a case the commission would have been bound to have sustained such plea of limitation. My information is, however, that Germany has not interposed the plea of limitation in any case where a claim had been filed with the Secretary of State or with the Alien Property Custodian or with any agency of the Government of the United States, where the claimant was trying in good faith to give notice, and, through inadvertence, filed his claim with the wrong agency.

Senator BAYARD. As long as they came within the six months' period?

Mr. PARKER. Yes. Is that correct, Mr. Phoenix?

Mr. PHOENIX. My understanding is that since July 1 the German agent has raised the question of the six months' bar.

The CHAIRMAN. Since July 1?

Mr. PARKER. Since July 1 of last year, 1926.

Senator REED of Pennsylvania. Mr. Parker, explain to me, if you please, how it comes that the Mixed Claims Commission has any jurisdiction of these debts owing by Germany prior to our declaration of war. I am thinking of these dollar bonds or Treasury certificates which matured before we declared war. How does it come that the commission has any jurisdiction of those?

Mr. PARKER. I will answer that as briefly as I can. I can not answer it in a word.

The economic clauses of the treaty of Versailles--(we will leave out entirely the reparations provisions, which deal only with physical damage to persons or property)--were constructed with a view to restoring as far and as speedily as possible economic relations--commercial intercourse--between the allied and the Central Powers that had been disrupted by the war. One of the methods for accomplishing this end provided in the treaty of Versailles was to establish a clearing-office system, which the United States never adopted.

The purpose of the machinery set up under the clearing office system was to offset the claims of allied national against the claim of German nationals and "clear" them just as banks make daily clearing house settlements. This system in its application as between Great Britain and Germany, for example, functioned thus: Great Britain created a British clearing office to deal with German claims and Germany created a German clearing office to deal with British claims. The British clearing office collected from British nationals the debts owing by them to German nationals and the German clearing office collected from German nationals the debts owing by them to British nationals. Under this clearing office plan these debts were computed and discharged at the pre-war rate of exchange. Under it, notwithstanding their vigorous protests, British nationals were required to pay into the British clearing office debts payable in marks, owing by them to German nationals at the pre-war rate of exchange, although the value of the mark had very greatly depreciated. Under it, Great Britain also paid into the British clearing office the proceeds of the liquidation of property of German nationals which Great Britain had seized or subjected to exceptional war measures or measures of transfer during the war. Under this plan Great Britain utilized the funds paid into the British clearing office for the payment of claims of British nationals whose property had been sequestered by Germany during the war and also for the payment of the debts owing to British nationals by German nationals. Germany was given credit by Great Britain for all amounts paid by the British clearing office to British nationals. The plan further contemplated that Germany should, through the German clearing office, pursue the same course that Great Britain pursued through the British clearing office and that payments made by one Government to its nationals should be offset against the payments made by the other Government to its nationals.

and a balance struck. It will be noted that this plan was reciprocal in its nature and equally binding on both Governments, parties to it. Debts and claims were valorized at the pre-war rate of exchange. The obvious reason for this provision was that on the declaration of war, debts could not be paid, and if they were due on the declaration of war the creditor was entitled then to payment at the then rate of exchange. If the debt matured during the war the creditor was ordinarily entitled to payment at the then rate of exchange. Under these provisions Great Britain required British nationals to pay at the pre-war rate of exchange into the British clearing office, debts owing by the British nationals to German nationals payable in marks. The British nationals protested, saying their debts were owing in marks; that they had the marks and they wanted to pay their debts with marks, but their Government replied, in substance, that the provisions of the clearing office system were reciprocal and the British debtor was bound thereby as much as the British creditor. Therefore, the British debtors were required to pay their mark debts into the British clearing office at the pre-war rate of exchange. This illustrates the reciprocal character of the clearing office plan.

One of the provisions of the clearing office system was that each Government should guarantee the debts of its own nationals. The representatives of the United States at Paris, participating in the framing of the Versailles treaty, opposed the clearing office system, and gave notice that they would have none of it—that is, so far as their voice could control—that the United States would not adopt the clearing office system; that it would not go into the business of guaranteeing the debts of its nationals. Practically all the allied powers did adopt it. When it was to their advantage to do so, they always did adopt it; but it was optional with the Allies to adopt or not, as they saw fit. If they did not within six months, I think it was, after the coming into effect of the treaty give notice that they adopted the clearing office system, it was not adopted as between them and Germany.

Right there, let me say that Great Britain contends that she has never confiscated any Germany property.

Senator REED of Pennsylvania. She has merely put it into the clearing office pot?

Mr. PARKER. She has put it into the clearing office, and that if Germany had lived up to the provisions of the treaty of Versailles and collected from the German debtor the amount owing by him to the British creditor at the pre-war rate of exchange, the amount would have far exceeded that collected by Great Britain, and that the amount would have been more than sufficient to pay all of the British debts. Of course, Germany's response to that is that to have required the German debtor to settle at the pre-war rate of exchange was economically impossible; that to have done so would have broken every bank in Germany, and financial, commercial, and industrial chaos would have resulted.

Senator REED of Pennsylvania. Let us not forget my original question.

Mr. PARKER. I beg your pardon. I did digress there. But the representatives of the United States, having in mind that America

probably would not adopt the clearing office system, did provide by paragraph 4 of the annex to section IV of part X of the treaty that all the property, rights, and interests held by any allied or associated power could, at the election of that power, be charged (a) with claims by its nationals "with regard to their property, rights, and interests * * * in German territory" or (b) with debts owing to such nationals by German nationals and (c) with claims growing out of acts committed by the German Government or authorities during the period of neutrality between that power and Germany.

Senator REED of Pennsylvania. Regardless of whether those debts matured before or after the war?

Mr. PARKER. No. The term "debt" is defined in the treaty. "Debts" dealt with are those which matured either before the war or during the war.

Senator REED of Pennsylvania. Does it include these pre-war bonds?

Mr. PARKER. If they matured before or during the war.

Senator REED of Pennsylvania. Yes; payable in dollars, which matured before we entered the war?

Mr. PARKER. Yes, sir.

Senator REED of Pennsylvania. Those have been reduced to judgment in a number of cases in this country, I understand.

Mr. PARKER. Yes.

Senator REED of Pennsylvania. And the fund in the Alien Property Custodian's hands ascribable to the German Government and the royal family has been wholly absorbed in the partial satisfaction of those judgments?

Mr. PARKER. Yes.

The CHAIRMAN. \$2,442,000.

Mr. PARKER. The German Government realized that the United States had the power, if it elected to exercise it, to apply the German property that was in the hands of the Alien Property Custodian to the payment of American debts falling within the treaty, and that the treaty provided that, to the extent that the United States did apply the custodian's fund to the payment of such American debts, Germany should reimburse her nationals for their property so applied. There is an indirect liability of Germany for the payment of those debts. That was the contention of the State Department, that Germany was liable for the payment of those debts falling within the treaty. Germany contested that before the commission; but, before it was decided by the commission, the German Government accepted the viewpoint of the American Government that Germany was primarily liable—not secondarily, not as a guarantor, but primarily liable—for the payment of those debts; and the commission has recognized that agreement and applied it to the claims that have been presented to it. So that Germany, realizing that debts falling within the terms of the treaty could, if the United States elected, be paid out of the alien property fund, recognized its primary liability for those debts; and awards have been entered against Germany for those debts as debts, quite irrespective of whether any exceptional war measures or measures of transfer have been applied to them or not.

Senator REED of Pennsylvania. And that includes not only debts of the German Government, for which, of course, she was primarily liable—

Mr. PARKER. Yes.

Senator REED of Pennsylvania. But also debts of German nationals?

Mr. PARKER. To American nationals, which matured before the war or matured during the war.

Senator REED of Pennsylvania. And in such cases awards have been made against the German Government as if it were the primary debtor?

Mr. PARKER. Yes.

Senator McLEAN. Because they fell within the terms of the treaty?

Mr. PARKER. Because they fell within the terms of the treaty.

Senator McLEAN. The definition of the debt?

Mr. PARKER. Yes.

The CHAIRMAN. If the obligation fell due prior to November 11, 1918?

Mr. PARKER. If it fell due prior to the making of peace with Germany, prior to July 2, 1921, which is a very much more liberal provision to the American creditor.

The CHAIRMAN. Oh, yes.

Mr. PARKER. I will put into the record following my testimony some of the orders of the commission dealing with claims of American nationals against Germany involving debts, bank deposits and/or bonds which will give to the committee a fuller understanding of the principles governing the disposition of such claims.

Senator REED of Pennsylvania. You conceive it to be within our power to apply the sequestered property here to the payment of a debt due by German nationals as well as by the German Government, because of the fact that the German Government has now assumed primary responsibility for them?

Mr. PARKER. As I said, Senator, the commission has nothing in the world to do with the payment of the claims. That is for you.

Senator REED of Pennsylvania. I am looking for light on our treaty powers. Under the Berlin treaty there seems to be an enlargement of the provisions of the Knox-Porter resolution and of the treaty of Versailles by this assumption of liability on the part of the German Government that it is the primary debtor, even though the debt was created by one of its nationals.

Mr. PARKER. The German Government's position is that their adoption of the viewpoint of the American Government in that regard was an enlargement of their obligations.

Senator BAYARD. Did that operation take place by an exchange of notes, Judge Parker, or what form did it take?

Mr. PARKER. The German chancellor authorized the German agent to make the commitment. The then Secretary of State, Mr. Hughes, authorized the American agent to accept it. That was all a matter of record, and spread on the minutes of the commission.

Senator JONES of New Mexico. I think it advisable to have that much of the record in our record here.

Senator REED of Pennsylvania. Are copies of those letters available?

The CHAIRMAN. You mean the minutes of the commission covering this agreement?

Senator JONES of New Mexico. Yes; between our agent and the German agent as to that point; or, in other words, the record and the correspondence leading up to it.

Mr. PARKER. I shall be very glad to supply that.

The CHAIRMAN. If there is no objection to making it public. They are public records, I presume?

Mr. PARKER. They are public records.

The CHAIRMAN. Then will you prepare it, and we will have it go in the record at this point?

Mr. PARKER. I shall be very glad to furnish it. Everything the commission does is a public record.

The CHAIRMAN. Are there any other question?

Senator BAYARD. I should like to ask Judge Parker one more question, if I may, in regard to the question of the value of the German ships.

Has your commission up to date determined upon any basis of valuation?

Mr. PARKER. Of German ships?

Senator BAYARD. Of the ships taken from Germany by this Government.

Mr. PARKER. That, Senator, is a matter over which the commission has no jurisdiction whatever. Our jurisdiction is confined to determining what claims fall within the terms of the treaty of Berlin, and the amount of Germany's financial obligation thereon. We have no jurisdiction whatever over claims of German nationals against the United States.

Senator BAYARD. There are claims filed before your commission in regard to these ships taken by the American Government from the German nationals, are there not?

Mr. PARKER. None whatever.

Senator BAYARD. None at all?

Mr. PARKER. None.

Senator BAYARD. In other words, the reparations or the repayment to the German national owners of the ships taken by the American Goverment in no way come before your commission?

Mr. PARKER. None whatever. The question of valuation of ships has been before our Commission in cases where ships were destroyed or damaged by Germany or for which Germany was liable under the Treaty of Berlin; and we have devoted a great deal of time and accumulated a vast amount of evidence as a basis for valuing ships and valuing all interests in ships including charter interests.

The CHAIRMAN. Were any of those ships taken over by our Government, or were they owned by American companies or American individuals?

Mr. PARKER. Some of them were owned by American nationals, American companies; some of them were being operated by the United States Government under requisitions or otherwise.

The CHAIRMAN. Were any of them the German-owned ships?

Mr. PARKER. No. That is the other side of the picture.

Senator BAYARD. It does not come within the powers of your Commission?

Mr. PARKER. No.

Senator BAYARD. I wanted to make sure of that.

Mr. PARKER. We had a very great many ship cases before us, and, as a matter of fact, probably two-thirds in amount of the awards made by the Commission to date grow out of maritime losses, deaths, personal injuries, damage to ships, destruction of ships, destruction of cargoes, and what not.

Senator BAYARD. You did have to pass, Judge Parker, upon the claims of the American shipowners whose ships were injured or taken or destroyed by Germany, did you not?

Mr. PARKER. Yes.

Senator BAYARD. What general rule did you apply in determining their value, and as of what date—as of the time of the destruction or taking?

Mr. PARKER. The reasonable market value of the ship at the time and place of destruction.

Senator BAYARD. Taking into consideration their condition and all attendant circumstances?

Mr. PARKER. Taking that into consideration.

If I may do so without boring you, I think I can turn to the rule that we undertook to lay down.

We had some very difficult cases which involved the question of American charterers' interests in foreign ships; and in undertaking to lay down that rule, to determine what interest the American charterer had in a ship chartered by him, we determined the reasonable market value of the ship at the time and place from evidence that was before us and determined to what extent the charter was an incumbrance on the ship. In some instances the charter was worth more than the ship.

The CHAIRMAN. But all of those cases are not involved in the legislation before us?

Mr. PARKER. None whatever. The question was as to the rule in determining the value of the ship and in a decision by the umpire that rule is quite clearly announced.

Senator BAYARD. In other words, to take one class—if I may divide them generally into classes—where a ship was laden and going across the ocean and was sunk, you take into consideration all the circumstances surrounding that operation and you apply the then value of the thing?

Mr. PARKER. Yes.

Senator BAYARD. And, on the other hand, when it came to the question of a ship that was interned in Germany, you take into consideration the fact that, being interned, its market value would be determined by the fact of the internment?

Mr. PARKER. This would have been true had any American-owned ships been interned in Germany, but no such case has come before our commission. The commission has, however, had cases where the principle which you invoke was involved. Such a case was that presented by the United States on behalf of the Housatonic Steamship Co. (Inc.), in which an award against Germany was sought for the value of the steamship *Housatonic* which was sunk by a German submarine on February 3, 1917. The opinion of the umpire of the commission deciding this case is found in the printed report of the decisions and opinions of the commission, pages 689

to 694, inclusive. From that opinion it appears that at the outbreak of the war in 1914 a German corporation owned this ship which sought an American port of refuge from which it was unable safely to issue. The German owner sold it to the American claimant for a very small sum. The American claimant in turn chartered the ship to a British firm "for the term of the present war," the charter rate stipulated for being less than one-fourth of the then current charter rate. The reason for this low rate was that Great Britain and the other Allied Powers were then asserting the right to capture and condemn vessels transferred subsequent to the outbreak of war from German to neutral registry. The existence of this condition made the *Housatonic* of little more value to the American claimant than she had been to her previous German owner because, notwithstanding her change of ownership, name, registry, and flag, she was still subject to the risk of capture and condemnation. One of the principal considerations moving the American owner to enter into a charter party with a British national was the obligation of the British charterer to secure immunity against attack or seizure on the part of the British and Allied Governments. In the course of the umpire's opinion this language was used:

Under normal conditions the cost of a vessel, her age, and physical condition, and the cost of replacement are important factors in arriving at her market value. Even in February, 1917, these factors were given some weight in arriving at the value of a ship, but the great demand for tonnage at that time rendered availability for immediate use of controlling importance. * * * * But the *Housatonic* was not a free ship. She was under charter to a British firm until "the cessation of the present war," at a stipulated hire of about 7 shillings per month per deadweight ton, while at the time of her loss the current rate was 46 shillings 6 pence per month per deadweight ton. Since that charter had been entered into the cost of operation of the *Housatonic*, which was borne by the claimant herein, such as wages of the master and crew, the cost of provisions, stores, repairs, etc., had greatly increased but the income from the hire was stationary, fixed by a charter of uncertain duration at a rate of less than one-fourth of the current rate at the time the charter was entered into and less than one-sixth the current rate at the time the ship was destroyed. These abnormally high charter rates were caused by the abnormal demand for tonnage for immediate use far in excess of the available supply. While ordinarily the prevailing freight rates were a controlling factor in determining the reasonable value of a free ship, they had little influence in determining the value of the owner's interest in the *Housatonic*, which was not a free ship. The fact that she was not free, the fact that she was not available to the owner so that he might take advantage of the abnormally high freight rates and charter rates but must be operated exclusively in the interest of a British firm until the "cessation of the present war" at charter hire little if any in excess of the operating costs which must be borne by the owner, render the owner's interest in her of a highly speculative and doubtful value.

In view of the conditions existing on February 3, 1917, it may well be doubted if the claimant could have realized on the *Housatonic*, encumbered with her charter, any substantial amount. Doubtless there were in America and in other countries many adventurers willing to take great risks for the chance of reaping large rewards. But all such as a rule confined their activities to garnering war profits where large and quick returns were promised; they were not interested in tying up their cash resources without any return during the war, where the afterwar profits were at best uncertain and highly speculative.

In dealing generally with ship values and charter values the umpire in the decision designated "Administrative Decision No. VII-A" held:

The commission has had procured and laid before it much data dealing with the relative demand and supply of ships; charts purporting to reflect the market prices of vessels with the fluctuations in those prices graphically expressed; and tabulated statements of actual sales of bottoms made during periods prior to, throughout, and subsequent to the World War, compiled from evidence filed in numerous cases before the commission. From these it is possible to evolve a fairly accurate composit of tonnage values at any particular time during the war period. But at best this presents merely a composite picture, a general average, and while helpful as a general guide it can not safely be used as a standard of measurement without making particular adjustments for the actual conditions which obtained in each particular case. Ships are in a sense living things, created to move and to carry, not to be consumed. Food and fuel may be measured on a unit of value per ton, but a ship's value must be measured according to her ability to perform—to carry safely in volume with dispatch and economy.

There are many factors which must be taken into account in arriving at the fair market value of any vessel at any particular time and place, and the weighted value of each factor varies, of course, from time to time as the conditions change. This is especially true with respect to the abnormal and kaleidoscopic conditions created by the World War, as a result of which the trade in which a vessel was engaged, or the particular seas to which her use was restricted, or her nationality (as affecting the extent of her exposure to regulation, requisition, or destruction), considered in connection with the laws of the nation to which she was subject, may, singly or together, have had an influence more or less controlling in determining her market value, although in normal times they would have been much less important. Normally the cost of a vessel, her age and physical condition, and the cost of replacement are important factors in arriving at her market value. Some of the shipping experts whose testimony has been presented to the commission go so far as to declare that during the war period those factors were without influence in determining the value of a ship, which was measured solely by her availability for use. While the evidence before the commission of actual sales made and of charters actually entered into, involving bottoms of varying ages and classes, does not justify those extreme statements, nevertheless there were times during the war period when the demands for tonnage so far exceeded the available supply, and those demands were so imperative, that factors normally controlling were so far outweighed by the consideration of availability for use as to become comparatively insignificant. But even that condition was not constant, and conditions existing at the particular time must be looked to in determining the relative importance of the various elements obtaining in each case.

Speaking generally, the factors which must be taken into account during the war period in fixing the value of the whole ship including all estates therein are availability for use, cargo capacity, nationality of registry and of ownership, nationality of charterer, class, original and reproduction costs, speed, age, draft, and adaptability for particular trades.

The nationality of registry and of ownership and the charterer's nationality are important in determining generally the degree of exposure to requisition and to regulation both as to use and rates. For example, it will be recalled that Great Britain did not hesitate to assert and to exercise jurisdiction for the purpose of requisitioning ships of British registry operating even outside of British waters while under charter to Americans during American neutrality. It will also be recalled that the far-reaching regulations applied by the allied powers, and later by the United States after it had entered the war, affected not only the tonnage of the nation issuing them but indirectly, to a great extent, neutral tonnage as well. Witness the British regulation of January 12, 1917, forbidding the chartering of any vessel of over 1,000 tons deadweight cargo capacity to or from an allied port, except with the license of the board of trade; the later regulation of March, 1917, forbidding the purchase or sale in England of any foreign vessel; the regulation of chartering and of charter rates on vessels of both American and foreign registry by the United States Shipping Board; the arrangement devised by Great Britain, sometimes referred to as the "bunker pressure," made possible by the need of Norway, Sweden, and Denmark for British coal, whereby those Scandinavian countries provided for the chartering or requisitioning at reduced rates of certain tonnage of their nationals to the allied powers in consideration of the latter's arranging to deliver them coal and other supplies; the

requisitioning by the allied powers and by the United States of Dutch tonnage; and the agreement entered into between the United States and Japan in March, 1918, whereby the latter nation undertook to furnish the former with 150,000 dead-weight tons of steam shipping for war-zone trade in exchange for steel to be used principally in shipbuilding. The influence exerted by the interallied ship control over tonnage values, chartering, and charter rates, even as applied to neutral vessels while indirect, was substantial, but it varied from time to time; and this influence at any particular moment must be considered in determining the value of a vessel or the value of a charter thereof at that time.

While it is true that vessels of neutrals and vessels of some belligerents were less subject to these restrictions than those of other belligerents, nevertheless it is a mistake to assume, as several of the shipping experts have assumed in their testimony before this commission, that neutral bottoms were throughout the period of the war free from all restrictions and hence that American charters on such vessels must be valued accordingly. We are not here concerned with any question of the right of a particular government to enforce restrictions and regulations without compensation, but only with the fact of their existence and enforcement and the effect which they actually had on the market value of the vessels at the time of destruction.

In the same opinion the umpire held in substance that by the law of averages the risk of loss of a vessel "as it then appeared at any given time can be approximated by the application of the war-risk insurance rates which were then in effect and applicable to the particular trade in which the ship was at that time engaged, taking into account the safe margin allowed by the insurers."

THE CHAIRMAN. The same as in the case of life insurance on a man?

MR. PARKER. Yes; and it can be determined with reasonable accuracy. The United States Veterans' Bureau had fixed rates; the British Government had rates for war-risk insurance, so that one could tell what the reasonable probabilities were of a given ship surviving the war.

SENATOR JONES of New Mexico. In other words, the owner, in order to establish a value, had to insure it for the war?

MR. PARKER. The owner could if he liked carry his own insurance but in determining the value of a ship the risk of loss was a factor to be taken into account. Immediate availability for unrestricted use was one of the principal factors determining the value of a ship during the war. Thus the steam ship *Housatonic* to which reference has been made, which at the outbreak of the war in 1914 sought an American port of refuge, was of comparatively small value to her German owner because she was not available for use, and after she was acquired by the American claimant her value was not greatly increased because the American claimant in order to use her (American being then neutral) was compelled to charter her to a British national during the period of the war at a very low charter rate.

The committee has requested that I file with it an excerpt from the minutes of the committee of May 15, 1923, dealing with Germany's primary liability for debts owing by German nationals to American nationals. I have pleasure in so doing. Such excerpts from the minutes follow:

The German agent, Mr. Karl von Lewinski, read the following statement, which the commission directed be spread upon the minutes:

To the Mixed Claims Commission, United States and Germany:

In the course of the preliminary proceedings before the Mixed Claims Commission established under the agreement of August 10, 1922, to ascertain Germany's financial obligations, a difference of opinion has arisen with reference

to certain claims, in particular those against private debtors, as to whether the German Government is directly liable for the same as principal debtor or whether Germany's liability is restricted to the German property seized in the United States.

In order that a speedy and amicable adjustment of all claims may be effected the Government of Germany is desirous of clearing this dispute out of the way. For this purpose I am authorized by my Government to adopt, and do hereby adopt, the wider viewpoint asserted on behalf of the United States Government by the American agent according to which Germany is primarily liable with respect to all claims and debts coming within the jurisdiction of the Mixed Claims Commission under the agreement of August 10, 1922.

I am authorized to state that this declaration is made without prejudice to the American Government's right under the treaty of August 25, 1921, to have such claims and debts satisfied from the proceeds of the property of the German Government and German nationals seized by the United States; and that it is also made subject to the following reservations or conditions:

(a) By the adoption of the broader viewpoint according to which the German Government is liable as principal debtor, the German Government and the German private debtor, as respondents to the claims brought before the commission, shall in no wise be prejudiced or restricted in asserting any rights or defenses with respect to the merits of such claims or debts not involving Germany's primary liability as principal debtor, in particular as regards the currency and rate of exchange at which such debts are payable.

(b) Germany will not be liable for a private debt if such debt was on July 31, 1914, already barred by a statute of limitation or if the debtor at that time was in a state of bankruptcy or failure or had given formal indication of insolvency.

(c) The claims based upon private debts shall be directed against the Government of Germany and the German private debtor jointly.

(d) Upon a claim based on such debt being entered upon the commission's docket by the United States, Germany shall within 45 days from the date of such docketing (subject to extension of time by order of the commission) give notice thereof to such German national and require such national to furnish Germany with all necessary information and data for its proper defense, if any. Such claims may be called for submission by the commission at any time not less than 90 days after their docketing, subject to an extension of time for submission by order of the commission on the application of either party.

(e) Each award in claims where private debtors are included should state the portion thereof for which the German private debtor is also obligated.

KARL VON LEWINSKI,
German Agent.

Thereupon the American agent, Mr. Robert C. Morris, read the following statement, which the commission directed be spread upon the minutes:

"The foregoing declaration of the German agent is received by the American agent subject to the reservations and conditions mentioned.

"ROBERT C. MORRIS,
American Agent."

It will be noted that Germany had contended that with respect to private debts owing by German nationals to American nationals "Germany's liability is restricted to the German property seized in the United States" but that in order to settle the controversy Germany admitted primary liability "with respect to all claims and debts coming within the jurisdiction of the Mixed Claims Commission under the agreement of August 10, 1922." By this admission Germany waived her contention that she was not primarily liable for "neutrality claims" and "debts" falling within the terms of the treaty of Berlin and that the satisfaction of such claims was restricted to the German property seized within the United States.

It will be borne in mind that in order to provide for the payment of debts owing to American nationals by German nationals without adopting a clearing-office system and also to provide for the pay-

ment of claims of American nationals arising during the period of American neutrality, paragraph 4 of the annex to Section IV of Part X was, largely on the suggestion and insistence of the American representatives, written into the treaty. The provisions of this paragraph in terms simply authorized the United States to charge the proceeds of German property, rights, and interests and the cash assets of German nationals received by it with the payment of the enumerated claims of American nationals. But it will be noted that by the treaty terms Germany has not only agreed that the assets of her nationals held by the United States may be applied to the payment of the debts mentioned, but has expressly undertaken to compensate her nationals for their property so applied. Paragraph (i) of article 297 of the treaty provides that "Germany undertakes to compensate her nationals in respect of the sale or retention of their property, rights, or interests in allied or associated States." In the last analysis these provisions, read together, amount to an indirect method on Germany's part of undertaking to pay these claims of American nationals which by virtue of such undertaking become liabilities of Germany. It was this viewpoint, asserted by the American Government, through the American agent, which Germany, through the German agent, adopted as set forth in the minutes of the commission above set out.

CLAIMS OF AMERICAN NATIONALS AGAINST GERMANY INVOLVING DEBTS, BANK DEPOSITS, AND/OR BONDS, FALLING UNDER PART X OF THE TREATY OF VERSAILLES AS CARRIED INTO THE TREATY OF BERLIN.

I also have pleasure in complying with the request of the committee and filing herewith certified copies of excerpts of the meetings of the commission of (a) February 25, 1925, (b) March 25, 1925, and (c) May 7, 1925, all dealing with claims of American nationals against Germany involving debts, bank deposits, and/or bonds. These records, which should be read together, follow:

[From the meeting of February 25, 1925]

The American agent, Mr. Robert W. Bonynge, announced that he was in receipt of a proposition submitted by the German agent, Mr. Karl von Lewinski, on behalf of the Government of Germany covering a general basis for the settlement of claims before the commission involving mark bank balances and private debts owing in marks. This proposition reads as follows:

BERLIN, GERMANY, August 19, 1924.

Hon. ROBERT W. BONYNGE,
Agent of the United States
Before the Mixed Claims Commission,
United States and Germany,
Washington, D. C.

SIR: Reference is made to the class of claims against the government of Germany included in the list of claims that have been notified to the commission and to the German agent that embrace (1) the mark balances carried in German banks in favor of American nationals, and (2) private debts owing in marks from German nationals to American nationals, with respect to which two classes of claims the principal sum involved has not been paid over to the German Treuhander in accordance with exceptional war legislation enacted by the government of Germany.

As I understand your position in regard to claims of these two classes, it is, briefly, that the American claimant under the treaty of Berlin is entitled to

recover the principal sum involved at the pre-war rate of exchange, together with interest thereon, as you contend, is provided for in the treaty.

As you know, the position of my Government in respect to claims of this particular class may, I believe, be stated briefly as follows:

The American claimant is only entitled to a recovery other than in marks in those cases where the principal sum involved was affected by the exceptional war legislation. In such cases recovery may be had based on the difference between the value of the mark as of the date affected and the value as of the date of the repeal of the exceptional war legislation. Interest on this principal sum should also, according to the contention of my Government, be suspended during the period that the United States was at war with the Government of Germany.

As it will, in my opinion, unquestionably be of material advantage to both Governments to arrange for a settlement of the many difficult and intricate questions involved, I have the honor to submit, with the approval of my Government, a proposition in the nature of a compromise covering a general settlement of the principles governing these particular claims. This proposition, my Government feels, should be submitted in order that an amicable adjustment may be reached that will be fair, just, and equitable to the two Governments and their nationals concerned, and that a speedy adjustment of the differences may be had.

With respect to mark bank balances, I am authorized to say that I will consent to an award being entered whereby the American claimant may recover such balances on the basis of one mark equals 16 cents; the balances in general in such claims to be stated as of April 6, 1917, or as near such date as may be convenient and practicable, the balance as of the date stated to be increased or diminished by appropriate credits or debits arising out of changes in the account during the period of belligerency as defined in the commission's administrative decision No. I. The balance as thus stated to bear interest at the rate of 5 per cent from January 1, 1920, until date of payment.

I am also authorized to say that a settlement of the mark debts owing from German nationals to American nationals will be made on the same general basis, namely, that an award may be entered whereby the principal mark sum involved will be valued on the basis of one mark equals 16 cents. Where the debt became due and owing prior to April 6, 1917, such debt to be stated as of April 6, 1917, including interest thereon at the rate agreed upon between the parties, or, in the event of no express agreement, then at the rate provided for in accordance with custom and practice in good business dealings. Where the debt fell due during the period of belligerency as defined in administrative decision No. I, then the debt to be stated as of its due date. The awards thus arrived at are to bear interest at the rate of 5 per cent from January 1, 1920, until paid.

It will be understood that this offer of compromise does not embrace claims involving bank deposits or private debts that may have been satisfied under the legislation of the Government of Germany by the German national paying the amounts involved directly to the Treuhander. In all such cases an award may be entered whereby recovery may be had of the amount involved on the basis of one mark equals 17.4 cents, such award to bear interest at the rate of 5 per cent from date of payment to the Treuhander to the date of final payment of the award by the Government of Germany.

This offer of compromise is submitted with the understanding that as a condition precedent to an award in favor of the United States on behalf of one of its nationals, such national is to be required by the Government of the United States to execute a formal waiver of any rights he may consider he has to proceed directly against the German national involved in the courts of either Government or under the provisions of the trading with the enemy act, approved October 6, 1917, and the amendments thereto.

It is my further understanding in case this offer of compromise is accepted by the Government of the United States that the awards in each case are to be made by the Mixed Claims Commission, United States and Germany, against the Government of Germany, such awards, however, to set out in appropriate detail the facts in relation to the debt between the nationals involved, including the amount thereof in marks, and the due date arrived at in the manner above outlined.

It will, of course, be understood that in submitting this offer of compromise I reserve the right to make whatever defenses may be appropriate in any

particular claim, other than such defenses as may involve the question of the rate of exchange or interest.

In submitting this offer of compromise my Government desires it to be understood that the offer in no way whatsoever is to be taken as affecting in any manner the question of the liability of the particular German national involved to the German Government.

I have the honor to be, sir,

Your obedient servant,

KARL VON LEWINSKI,
German Agent.

The American agent informed the commission that he had submitted this proposition to the honorable the Secretary of State for his consideration with the request that appropriate instructions be issued to him in relation to its acceptance on the part of the United States.

A question having arisen as to the proper interpretation to be placed on the particular paragraph of the proposition relating to the execution by the claimant of a waiver of rights to proceed against the German national in a forum other than the commission, the German agent on February 16, 1925, submitted to the American agent the following interpretation to be placed on this particular paragraph of the proposition:

WASHINGTON, D. C.,
February 16, 1925.

Hon. ROBERT W. BONYNGE,

*Agent of the United States Mixed Claims Commission,
United States and Germany.*

MY DEAR MR. BONYNGE: Confirming our conference of to-day I beg to advise you that I approve of the following interpretation of my proposition of August 19, 1924:

First. In case the particular claimant is the holder of a lien, or liens, the proposition is to be interpreted so as not to interfere with the claimant maintaining and prosecuting any lien he may have based on the possession prior to October 6, 1917, of assets of the German debtor involving property within the United States, title to which is alleged to be in the particular German debtor, or has been seized under the trading with the enemy act of October 6, 1917, or amendments thereto, as property of such debtor. An award may be made at the rate provided for in the proposition of August 19, 1924, subject to the condition incorporated in and forming a part of the award that any funds recovered by the lien holder on account of such lien, or liens, be deducted from the amount awarded.

Second. With respect to a claimant other than a lien holder, as hereinbefore mentioned, who has heretofore brought suit for the recovery of a mark bank balance, or a debt owing in marks, if such claimant does not make an election on or before December 1, 1925, or such later date as may be fixed by you, either to proceed before the Mixed Claims Commission or to continue with the suit, then an award may be entered by the commission at the rate provided for in the proposition of August 19, 1924, subject, however, to the condition subsequent to be incorporated in and form a part of the award that such award shall be ineffective for any purpose whatsoever should the claimant proceed to enforce any judgment he may obtain in the court proceedings.

Third. The waiver, hereinabove referred to, does not in any sense involve a waiver of the general charge on the privately owned enemy property provided for by the treaty of Berlin in favor of the United States for the satisfaction of claims against the Government of Germany as enumerated in the joint resolution of the Congress of July 2, 1921.

Yours very truly,

KARL VON LEWINSKI,
German Agent.

The American agent further informed the commission that, in accordance with authority received from the honorable the Secretary of State, he is now authorized to accept and does accept on the part of the United States of America the foregoing proposition subject to the interpretation placed thereon by the German agent, as above set out.

[From the meeting of March 25, 1925]

The umpire announced the following order of the commission:

By the COMMISSION:

Whereas the commission is now called upon to deal with that certain category of claims based on mark balances in German banks due American nationals, and/or private debts owing in marks from German nationals to American nationals, and

Whereas the American and German agents have submitted for the consideration of the commission correspondence passing between them with respect to said category of claims, which correspondence is fully set out in the minutes of the meeting of this commission of February 25, 1925, at pages 410-416 inclusive;

Now, after fully hearing the American and German agents, and after full examination and consideration of the questions presented and the provisions of the treaty of Berlin applicable thereto, it is

Ordered (1) That the basis set forth in the aforementioned correspondence for computing the amount of the awards to be made by this commission in claims submitted to it falling within the terms of the treaty of Berlin of August 25, 1921, and within the aforementioned category be, and the same is hereby adopted and will be applied by this commission in determining the amount, if any, to be awarded in such claims.

(2) Upon the submission of each claim falling within such category there shall be presented, by the American agent, a waiver, in writing, in the form approved by the commission, executed by the claimant in triplicate originals, one of which shall be placed in the commission records pertaining to that particular claim, one delivered to the German agent, and one retained by the American agent.

(3) Every appropriate defense to each claim of said category may be interposed by the German agent and answered by the American agent and will receive due consideration by the commission.

(4) This order, in so far as applicable, will control the preparation, presentation, and decision of all claims submitted to the commission falling within its scope, and whenever either agent is of the opinion that the peculiar facts of any case take it out of the rules here announced, such facts, with the differentiation believed to exist, will be called to the attention of the commission in the presentation of that case.

[From meeting of May 7, 1925]

The umpire joined with the two national commissioners in announcing the following order of the commission:

By the COMMISSION:

Whereas the commission is now called upon to deal with claims involving debts, bank deposits, and/or bonds falling under Part X of the treaty of Versailles as carried into the treaty of Berlin; and

Whereas the commission did, on March 25, 1925, enter an order in relation to certain of such claims:

Now, therefore, after fully hearing the American and the German agents, it is

Ordered, That in determining the financial obligations of Germany arising under the treaty of Berlin with respect to all such claims the following rules shall govern:

1. In order to establish liability on a claim based on a debt or bank balance, owing in marks from a German national or from the German Government, at the rate of 16 cents to the mark the claim must have been impressed with American nationality continuously from April 6, 1917, to July 2, 1921. If, however, the claim became impressed with American nationality by the naturalization of the claimant or otherwise through operation of law after April 6, 1917, but before July 2, 1921, and remained to that date impressed with American nationality, the American national will be entitled to recover his mark debt or mark bank balance at the rate of exchange existing at the time the claim became thus impressed with American nationality, not exceeding, however, 16 cents to the mark.

2. In all cases covered by paragraph 1 above, the residence of the American creditor as claimant must be established in the territory of the United States and the residence of the German debtor in German territory as it existed on

July 2, 1921, at some time between April 6, 1917, and July 2, 1921, both inclusive, and also in so far as concerns debts at some time after the debt became due.

3. No pecuniary obligation of the German Government for debts or bank balances as such attaches to debts or bank balances that by direct action of the parties have been actually satisfied. In all cases, however, in which Germany is not obligated for the debt or bank balance as such, the claimant will be entitled to an award for such damages as he may establish he sustained as the direct result of the application of an exceptional war measure to a debt or bank balance.

4. In all cases of obligations satisfied by payment to the Treuhaender, the claim must have been impressed with American nationality at the time of such payment, but it will not be necessary to establish that the claimant had a residence in the United States. If, however, the claim became impressed with American nationality by the naturalization of the claimant, or otherwise through operation of law, after the date of payment to the Treuhaender but before July 2, 1921, and was continuously to that date impressed with American nationality, the American national will be entitled to recover the amount involved at the rate of exchange as provided for in the last sentence of paragraph 1.

5. In all cases of payment directly to the Treuhaender in satisfaction of obligations for money due by way of dividends, interest, or other periodical payments, interest thereon shall be allowed from December 11, 1921, at the rate of 5 per cent per annum until paid.

6. German public bonds, including treasury notes, which became payable on or before July 2, 1921, to American nationals wheresoever residing, and which bonds or notes were impressed with American nationality as provided in paragraph 1 hereof, will be treated in the same way as debts are treated which are covered by the order of the commission of March 25, 1925, provided that the bonds or notes are produced and filed with the commission. Appropriate provision may, however, be made for cases in which it is established by competent evidence that the bond or notes is lost or destroyed.

7. Interest on German public bonds, including treasury notes, which became due and payable, on or before July 2, 1921, to American nationals wheresoever residing, and which bonds or notes were impressed with American nationality, as provided in paragraph 1 hereof, will be treated in the same way as debts are treated which are covered by the order of the commission of March 25, 1925, provided that the coupons, if any, are produced and filed with the commission. Appropriate provision may, however, be made for cases in which it is established by competent evidence that such coupons have been lost or destroyed. The fact that coupons have not been presented to the debtor will not constitute a defense.

8. In all claims for debts or bank balances payable in other than German currency, the rules with respect to the nationality of the claims and the residence of the parties as set forth in paragraphs 1 and 2 hereof, shall apply. In all claims based on German public bonds, including treasury notes, and/or on interest on such bonds or notes the rules with respect to the nationality of such claims as set forth in paragraph 1 hereof shall apply.

9. In all debt or bank balance cases involving other than German or United States currency the rate of exchange shall be the average cable transfer rate prevailing in the United States during the month immediately preceding April 6, 1917. If, however, the claim became impressed with American nationality by the naturalization of the claimant or otherwise through operation of law after April 6, 1917, but before July 2, 1921, and remained to that date impressed with American nationality, the American national will be entitled to recover such debt or bank balance at the rate of exchange existing at the time the claim became thus impressed with American nationality.

10. Bonds as such are not to be regarded as cash assets within the meaning of the treaty, as the terms of the treaty do not warrant a claim for valorization of bonds as such.

11. The American owners of bonds of any kind are entitled to compensation in respect of damage inflicted upon such bonds in German territory as it existed on August 1, 1914, by the application either of the exceptional war measures or measures of transfer mentioned in paragraphs 1 and 3 of the annex to Section IV of Part X of the Versailles treaty as incorporated in the treaty of Berlin.

12. All American-owned bonds located in German territory on November 10, 1917, will be considered as subjected to an exceptional war measure by the issuance of the decree of that date.

13. Although all exceptional war measures of Germany then in force were repealed by law on January 11, 1920, a claimant nevertheless will be entitled to establish by evidence that his property, rights, and interests were subject to measures in the nature of exceptional war measures in German territory, as defined in paragraph 11 hereof, before November 10, 1917, or after January 11, 1920, and in the event that he establishes such fact Germany will be responsible for any damage that the evidence shows he sustained by the application of such measures.

14. The fact that an exceptional war measure was applied to American-owned bonds is in itself not sufficient to justify a claim for compensation on account of depreciation in value but the claimant will be required to establish by evidence that the damage sustained was the proximate result thereof.

15. Whether an exceptional war measure was the proximate cause of the damage will depend on the facts in each particular case. In considering these facts the following principles will be observed:

(a) If the claimant took appropriate steps either to sell or exchange the bonds in Germany and was prevented from accomplishing this by an exceptional war measure, then the exceptional war measure will be regarded as the proximate cause of the damage sustained, on account of the depreciation in the value of such bonds.

(b) The exceptional war measure will be established as the proximate cause of the damage sustained on account of the depreciation in the value of such bonds that may be proven by the evidence in any particular case, if it appears that from all the facts and circumstances in such case the reasonable inference to be drawn therefrom is that the claimant would have withdrawn his bonds from Germany for the purpose of sale or exchange, had he not been prevented from doing so by such exceptional war measures.

(c) If the owner of the bonds was bound by contract or by the terms of the bond obligation to leave the bonds in Germany during the period of the war, the claimant must himself bear the consequence of the depreciation accruing during the period he was thus bound.

(d) If it appears from the circumstances and the evidence that the person having possession of the bonds in Germany was obligated to transmit them to the claimant without demand and did not fulfill this obligation on account of the war legislation, the principles laid down in administrative decision No. IV relating to estates will be followed.

The undersigned, joint secretaries of the Mixed Claims Commission, United States and Germany, established in pursuance of the agreement between the two Governments signed at Berlin on August 10, 1922, do hereby certify that the foregoing, according to its purport, is a true copy of a record of said commission.

In witness whereof, we have hereunto subscribed our names and affixed the seal of the said commission at Washington this 20th day of January, 1927.

[SEAL.]

ROBERT E. NEWBY,
American Joint Secretary.
MAX MARTIN,
German Joint Secretary.

It is apparent that the commission's order of May 7, 1925, is the one referred to in the letter from Ferdinand Meyer, of Baltimore, dated January 17, 1927, placed in the record on January 20 by Senator Bayard, and also in the letter from Robert H. Fordyce, chairman of the board of the United States Trust Co., of Paterson, N. J., dated January 4, 1927, placed in the record by Senator Edge.

If, as stated in these letters, bonds owned by American claimants held in Germany were sequestered by Germany to the damage of the American claimants it would seem that such claimants on producing evidence in substantiation of their statements would be entitled to awards by the commission against Germany. These letters quote isolated paragraphs from the commission's orders set out in full above. It will be noted that paragraph 11 of the order of May 7, 1925, provides that "The American owners of bonds of any kind are entitled to compensation in respect of damage inflicted upon such

bonds in German territory as it existed on August 1, 1914, by the application either of the exceptional war measures or measures of transfer mentioned," etc.

It will also be noted that paragraph 12 provides that "All American-owned bonds located in German territory on November 10, 1917, will be considered as subjected to an exceptional war measure by the issuance of the decree of that date."

This rule of evidence was promulgated by the commission in view of the difficulty of the American bondholder producing proof that his bonds were subjected to German war measures. This is a liberal rule favorable to American claimants.

It will also be noted that subdivision (b) of paragraph 15 provides that—

The exceptional war measure will be established as the proximate cause of the damage sustained on account of the depreciation in the value of such bonds that may be proven by the evidence in any particular case, if it appears that from all the facts and circumstances in such case the reasonable inference to be drawn therefrom is that the claimant would have withdrawn his bonds from Germany for the purpose of sale or exchange, had he not been prevented from doing so by such exceptional war measure.

This again is a liberal rule of evidence favorable to the American claimant and justified because of the practical difficulty experienced by American claimants in proving that war measures were the proximate cause of the damages complained of.

It will be noted that under paragraphs 6 and 7 of the order of the commission of May 7, 1925, German public bonds or interest thereon which became payable on or before the adoption of the congressional peace resolution of July 2, 1921, are treated as "debts" of Germany and provable as such, valorized at the pre-war rate of exchange.

But obviously bonds which were not payable at the time peace was restored between the United States and Germany are not "debts" within the terms of the treaty. (See par. 10 of the order of May 7, 1925.)

But if such bonds were subjected to exceptional war measures or measures of transfer by Germany, then Germany must make compensation to the extent of the damage sustained by the American national because of such measures. This liability is entirely distinct from the liability arising under the debt provisions of the treaty and is predicated on the provisions of paragraph (e) of article 297 of the treaty which provides that "The nationals of allied and associated powers shall be entitled to compensation in respect of damage or injury inflicted upon their property, rights or interests, including any company or association in which they are interested, in German territory as it existed on August 1, 1914, by the application either of the exceptional war measures or measures of transfer," etc. Under this provision and the order of the commission of May 7, 1925, American owners of bonds in Germany should have little difficulty in proving their damages against Germany if they in fact sustained damages by reason of German exceptional war measures.

It seems reasonably apparent that many of the bond claims mentioned in the correspondence above referred to, placed in the record by Senator Bayard and by Senator Edge, and also those mentioned in the letter from Mr. Zimmerman, of Zimmerman & Forshay, and men-

tioned in the letter of November 12, 1926, to Hon. William R. Green, placed in the record by Senator Bayard, are those which were dealt with by this commission in its Administrative Decision No. VIII, found at pages 347-352 of the printed decisions and opinions of this commission. From that opinion it appears that some of the claimants did not even acquire their bonds until after the signing of the armistice on November 11, 1918. Some of the others acquired German war bonds through the firm of Zimmerman & Forshay during the period of American neutrality with the understanding that the bonds were to be held for the purchaser by Zimmerman & Forshay's German correspondent. The purpose was apparent. The principal market for German war bonds was in Germany, and the records of this commission indicate that in many cases it was believed by the purchaser that at the conclusion of the war the securities of victorious Germany would command a price in excess of that paid by the purchasers. In some instances it was agreed that the bonds should remain in Germany during the period of the war. It was therefore provided in the order of May 7, 1925 (subdivision (c) of paragraph 15), that "If the owner of the bonds was bound by contract or by the terms of the bond obligation to leave the bonds in Germany during the period of the war, the claimant must himself bear the consequence of the depreciation accruing during the period he was thus bound." In such a case it is apparent that the owner of German war bonds could not have sustained any damages by reason of German exceptional war measures which prevented his doing what he had contracted to do, namely, to leave his bonds in Germany during the period of the war.

It is obviously impossible for the Senate Finance Committee to try all of these German war-bond cases and equally impossible for me here to take them up and examine them on their merits. Of one thing I am certain: All of these claimants who have timely presented their claims against Germany before the Mixed Claims Commission can obtain awards against Germany for the full amount to which they are entitled under the terms of the treaty of Berlin.

It is apparent that Zimmerman & Forshay knew of the agreement between the Governments of the United States and Germany for the giving of notice to Germany within six months of all claims to be asserted before this commission. Their own claims were timely filed by Zimmerman & Forshay. If those of their customers were not filed in time, the reason for the failure does not appear.

I also have pleasure, in complying with the request of the committee, to put in the record a statement as follows with respect to claims of holders of German treasury notes:

**CLAIMS OF HOLDERS OF GERMAN TREASURY NOTES PAYABLE IN THE UNITED STATES
IN DOLLARS PRESENTED OR TO BE PRESENTED TO THE MIXED CLAIMS COMMISSION,
UNITED STATES AND GERMANY.**

(1) The German treasury notes referred to in this memorandum were all issued by Germany in the United States, payable in the United States and in dollars, and matured on April 1, 1917, but were extended for one year from that date in consideration of the payment of interest. A typical note and the indorsement thereon follows:

Due on the first day of April, 1917.

Series 26. Lit. X. Nr. 157

TREASURY NOTE OF THE GERMAN EMPIRE

Part of a total of 10,000,000 dollars issued under authority of the law of December 24, 1915. (Code of the Empire of 1915, p. 842.)

The holder of this note is entitled to receive payment on April 1st, 1917, of the amount of 10,000 dollars (ten thousand dollars) in gold coin of the United States of America, at the office of the Central Trust Company of New York, New York. [SEAL.]

This note is exempt from all present and future German taxes and duties. The time for payment of this note after maturity is limited by prescription to April 1st, 1947.

This note is valid only if legalised by the signature of the Imperial German Ambassador at Washington, or by the signature of his authorized representative, under the embassy's official seal.

BERLIN, January 24, 1916.

REICHSSCHULDENVERWALTUNG.

[Illegible]

WASHINGTON —

GERMAN EMBASSY,

Issued: Bahn.

Registered:

Kgl. PREUSS. Kontrolle der Staatspapiere.

F. BERNSTORFF.

[Indorsement]

In consideration of the payment to the undersigned holder of this note of \$600 interest at the rate of 6 per cent per annum from April 1, 1917, to April 1, 1918, the receipt whereof is hereby acknowledged the payment and maturity of this treasury note is hereby extended to April 1, 1918.

[Signature.]

APRIL 26, 1920.

Paid \$323.33 on account of interest due on the within certificate.

CHANDLER & Co. (Inc.).

(2) Awards in such cases have been made by the commission as follows: Docket No. 142, Bausch H. Lomb Optical Co. On January 20, 1920, in the amount of \$50,000 with interest thereon.

Docket No. 7459, Alfred F. Lichtenstein and Oscar R. Lichtenstein, executive of the estate of Paul Lichtenstein, decedent. On November 8, 1920, in the amount of \$5,000 with interest thereon.

(3) Pending in the American agency are cases listed on the accompanying sheet which the American agent intends to present to the commission. In accordance with the decision of the Supreme Court of the United States rendered December 14, 1925, in the Mechanics Securities Corporation case, the claimants in each of these cases were, on January 14, 1926, paid the full amount of the principal of the notes and a further sum on account of accrued interest. On March 29, 1926, a second payment was made to each claimant on account of accrued interest. The balances due and unpaid are indicated in the last column of the accompanying statement. The claimant, through the American agent, will present these cases and ask awards from the Mixed Claims Commission for the balance due. The claimants are unable to collect this balance from the Alien Property Custodian at this time because the custodian is not able to certify that he has in his possession funds belonging to the Government of Germany. A part of these amounts could not be recovered in any event in the suits against the Alien Property Custodian because of a stipulation (apparently erroneously made) that interest should abate during the period of the war.

List No.	Claimant	Face on note	Paid under Judgment	Dates of payments	Total remaining unpaid
5208	Mechanics & Metals National Bank and/or Mechanics Securities Corporation of New York.	\$500,000.00	\$500,000.00 48,362.82 8,561.39	Jan. 14, 1926 do Mar. 29, 1926	\$160,575.79
			556,924.21		
5141	August Heckscher, New York.....	25,000.00	25,000.00 2,418.56 427.71	Jan. 14, 1926 do Mar. 29, 1926	8,028.73
			27,846.27		
2306	Republic Trading Co., New York.....	178,000.00	178,000.00 17,218.66 3,047.37	Jan. 14, 1926 do Mar. 29, 1926	57,103.97
			198,266.03		
5577-3	A. L. Garbat, New York.....	5,000.00	5,000.00 482.40 85.20	Jan. 14, 1926 do Mar. 29, 1926	1,607.40
			5,567.60		
5577-3 6292	Anna Thulmann, New York.....	11,000.00	11,000.00 1,064.38 188.21	Jan. 14, 1926 do Mar. 29, 1926	3,532.41
			12,252.59		
5577-3 5537	Jacob Kaufman, New York.....	10,000.00	10,000.00 966.19 171.22	Jan. 14, 1926 do Mar. 29, 1926	3,212.59
			11,137.41		
10516	Mercantile Trust Co., St. Louis.....	100,000.00	100,000.00 9,674.41 1,711.91	Jan. 14, 1926 do Mar. 29, 1926	32,113.68
			111,386.32		
6244	Equitable Trust Co., New York.....	500,000.00	500,000.00 48,362.82 8,561.39	Jan. 14, 1926 do Mar. 29, 1926	160,575.79
	Total.....		556,924.21		

As I have already stated, the claims of American owners of these German treasury notes fall within the treaty of Berlin, and when such claims are properly presented to the commission awards will be made against Germany on behalf of American claimants for the full amount of the notes and interest remaining unpaid just as has already been done in the two cases listed above.

While I am sure that all members of this committee agree that in all matters falling within the jurisdiction of the Mixed Claims Commission its decisions are final and binding upon the Governments of both the United States and Germany, and that no department of either Government has the power to disturb such decisions, nevertheless, in dealing with the broad question of how and when these awards shall be paid—with which the commission has no concern and with which you must deal—the members of this committee and other Members of the Senate of the United States have the right to know what the awards are and how they were arrived at. If this information is not already before you, I place myself unreservedly at your service to furnish it. If I can to any extent contribute in any way toward the solution of the difficult problems with which you are called upon to deal, I shall esteem it a privilege to serve you.

When you and all interested parties come to consider the decisions, opinions, and awards of the commission you will find that the com-

mission has patiently, painstakingly, and industriously discharged its task with even-handed justice, without regard to rank, station, or nationality. The traditional American policy of promoting international arbitration can be most effectively sustained and developed by arbitral tribunals actually functioning in a manner to deserve and command the respect and confidence of all interested parties. I hope and venture to believe that you may find the work of the Mixed Claims Commission has this effect.

Senator REED of Pennsylvania. Mr. Chairman, do you plan to take up the consideration of the bill this morning in executive session?

The CHAIRMAN. No; not this morning. We are not through yet. We should like to hear from Mr. Neagle this morning. We have 25 minutes more.

STATEMENT OF PICKENS NEAGLE, SOLICITOR IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL, NAVY DEPARTMENT

The CHAIRMAN. Please give your full name and position to the reporter.

Mr. NEAGLE. Pickens Neagle; solicitor in the office of the Judge Advocate General, Navy Department.

Senator JONES of New Mexico. Mr. Neagle, we have been discussing the organization of the commission to appraise the value of certain ships which were taken over by the Government of the United States about the time we entered the war. Will you tell us who constituted that commission, and how it was selected, and, so far as you know, what it did?

Mr. NEAGLE. A board was appointed consisting of three officers—four officers, perhaps—a captain, a constructor, an engineer, and a Supply Corps officer.

Senator JONES of New Mexico. Will you give their names?

Mr. NEAGLE. I can get them.

Senator JONES of New Mexico. I wish you would.

Mr. NEAGLE. Capt. W. A. Gill was president of the board; Naval Constructor W. B. Robert was a member; Lieut. Commander C. S. Joyce was a member; and Lieut. Daniel H. Cox was a member.

The joint resolution of May 12, 1917, provided, in section 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.

In accordance with that, the Secretary on the 19th of May appointed the board that is here named, and there was an appointment of the board with reference to each ship, and the board's report was made separately with reference to each ship.

Senator BAYARD. And a detailed report was made in regard to each ship, sir?

Mr. NEAGLE. For instance, this is a copy of one of the orders from the board to appraise enemy vessels to the Secretary of the Navy, relating to the *Adamsturm*:

Senator JONES of New Mexico. That is the name of the ship?
Mr. NEAGLE. That is the name of the German ship:

The board appointed by the Secretary of the Navy under date of May 19, 1917, with the approval of the President, after full and careful consideration of the age and physical condition of the ship *Adamsturm*, its equipment and appurtenances, at the time of the taking thereof, and all other information and facts bearing upon the value thereof, has ascertained and determined the actual value of said vessel, its equipment, appurtenances, and all property contained therein at the time of its taking, to be \$209,650.

This value is composed of the following items:

(a) The vessel, its equipment and appurtenances, \$200,100.

'I do not know whether you want these figures to go in or not.

The CHAIRMAN. Yes.

Mr. NEAGLE (reading):

(b) All other property contained therein, including fuel, consumable supplies, cargo, etc., \$550,000. Total, \$209,650.

The CHAIRMAN. It does not give the tonnage of the boat?

Mr. NEAGLE. No, sir. That is given elsewhere.

The CHAIRMAN. We can find it.

Mr. NEAGLE. That is very easily found.

Senator REED of Pennsylvania. Does it give the condition of its machinery.

Mr. NEAGLE. This paper does not; but the board had before it exhaustive information on that feature, and that information is in the possession of the Navy Department, in the proceedings of the board.

Senator BAYARD. And a survey was made of each ship for the purpose of valuation?

Mr. NEAGLE. Each ship separately, and each ship was reported on separately.

The CHAIRMAN. And the total amount of valuation of the interned ships was \$32,000,000?

Mr. NEAGLE. About \$33,000,000; about 99 ships.

Senator JONES of New Mexico. Who has a copy of Mr. McCarl's report here? I should like to have it for reference.

The CHAIRMAN. I left my copy down in my room. Have you a list here of the resale price of the ships?

Mr. NEAGLE. Yes, sir.

The CHAIRMAN. Carrying the amount of insurance on each, and, where sunk, the amount of insurance paid?

Mr. NEAGLE. No; I have not that before me.

(A copy of Mr. McCarl's report was placed before Senator Jones of New Mexico.)

The CHAIRMAN. You have simply got the sale price?

Mr. NEAGLE. Yes, sir.

Senator REED of Pennsylvania. What have you about the *Adamsturm*?

Mr. NEAGLE. In the case of the *Adamsturm*, its former owners were the Hansa Line of Germany. It was at one time named the *Actaeon*.

The CHAIRMAN. That is the American name?

Mr. NEAGLE. Yes, sir.

The CHAIRMAN. After taking over the boat?

Mr. NEAGLE. Yes, sir. Its deadweight tonnage was 7,000 tons, and its Navy appraisal in accordance with this report was \$209,650.

The CHAIRMAN. Seven thousand tons?

Mr. NEAGLE. Seven thousand tons; yes, sir.

The CHAIRMAN. That would be a little less than \$30 a ton.

Mr. NEAGLE. Yes, sir. Its fate is given here. That vessel was sunk; this does not say how or when.

The Shipping Board reports that the amount spent on reconditioning, repairs, and betterments amounted to \$179,189.17.

The CHAIRMAN. And you do not know what insurance was paid upon it?

Mr. NEAGLE. No, sir. That is not shown here.

The CHAIRMAN. I wonder if you could give us a complete list of these ships, the history of them as you have it on this statement, but adding to it just where the ships were. Why not put in the complete statement?

Senator JONES of New Mexico. I was just going to call the attention of the witness to the report of the Comptroller General, Mr. McCarl, which is published in his report to the Senate, and appears on pages 64, 65, 66, and 67. The statement on page 64 states the circumstances under which the appraisal was made; and I will ask to insert in the record at this point this statement of Mr. McCarl, beginning on page 64 of his report, headed "Steamships seized as property of enemies," and then the following pages down to and including about one-half of page 68, which is a summary of his report.

The CHAIRMAN. A recapitulation of it?

Senator JONES of New Mexico. Yes.

(The matter referred to is as follows:)

STEAMSHIPS SEIZED AS PROPERTY OF ENEMIES

In addition to the property taken over by the Alien Property Custodian, all enemy vessels found in American waters at or subsequent to the declaration of war against Germany and Austria-Hungary were seized by the United States Government under Executive order of June 30, 1917, and subsequent Executive orders, all issued in pursuance to joint resolution of Congress approved May 12, 1917. These vessels were turned over to the Navy, the War Department, the United States Shipping Board, and other Government agencies for use and operation.

These vessels were never under the control of the Alien Property Custodian. However, they were recorded on the books of his office. With a view of determining the present status of such vessels as were turned over to the United States Shipping Board, there was secured from that board the information relative thereto which is contained in statement following, showing the capital expenditures made by the board and amount realized for such vessels as were sold, lost, and insured or were chartered to foreign governments. This statement indicates that the United States Shipping Board realized \$12,913,712.94 for 69 ships, on which the capitalized cost for these particular ships was \$10,116,971.14, exclusive of the cost of ordinary operating repairs and reconditioning and not including the expenditures by the United States Government in the acquisition and the reconditioning of the vessels for transport service, etc., the cost of which was paid from the "national defense fund." Four of these ships, namely, *Grunewald*, *Prinz Sigismund*, *Sachsenwald*, and *Savoia*, seized in the harbor at Cristobal, Canal Zone, reconditioned by the Panama Canal at the expense and for the service of the Panama Railroad Co., were sold to that corporation for \$187,500 each, or a total of \$750,000.

The proceeds of the vessels sold by the United States Shipping Board Emergency Fleet Corporation were used for ship construction, repairs, maintenance, operation, payment of claims, etc., as provided in the merchant marine act and amendments thereto, thus reducing the appropriation requirements of that corporation.

As shown by the following statement of vessels taken over by the United States Shipping Board, the majority was owned by the Hamburg-American Line and the North German Lloyd Steamship Co.

Statement of ex-enemy vessels taken over by the United States Shipping Board, showing status of property as of January 2, 1926, including capitalized cost and proceeds of vessels sold, exclusive of general and administrative expenses and cost of seizure and reconditioning by the Navy

Name of vessel at time of seizure	Ex-owner	Class	Disposition	Cost to U. S. Shipping Board	Proceeds of sale or insurance collected	Appraised value in 1917
Adamaturm.	Others	Steel cargo	Sink (insured)	\$177,420.75	\$1,120,320.00	\$209,650.00
Allemannie.	Hamburg-American Line	do	do	234,926.70	673,400.00	71,700.00
Amerika.	do	Passenger and cargo	In operation	1,235,691.39		1,588,390.00
Andalusia.	do	Steel cargo	Sold	322,678.68	99,219.78	100,360.00
Andromeda	Others	Steel collier	To U. S. Navy	1,030.54		153,600.00
Arcadia	Hamburg-American Line	Steel cargo	Sold	102,375.41	130,231.66	86,940.00
Argus	do	Barge	do	197.66	3,833.33	
Armenia.	do	Steel cargo	do	113,591.20	92,320.00	86,150.00
Arni	do	Barge	do	1,922.22	3,833.33	
Arnoldus Vinnen.	Others	Sailing	do	83,703.38	48,125.00	23,500.00
Aroa.	Hamburg-American Line	Wood barge	do	5,329.95	3,833.34	
Barbarossa.	North German Lloyd	Passenger and cargo	do	68,177.19	14,982.76	463,710.00
Bochum.	Others	Steel cargo	do	142,938.13	477,914.58	781,300.00
Bohemia.	Hamburg-American Line	do	Laid up	257,178.28		246,400.00
Borneo.	North German Lloyd	do	Sold		237,500.00	82,800.00
Bulgaria.	Hamburg-American Line	Passenger and cargo	do		19,950.40	215,020.00
Camilla Rickmers.	Others	Steel cargo	Sunk (no insurance)	95,404.40		417,210.00
Carl Diederichsen.	do	do	Sold	33,212.22	200,000.00	44,390.00
Cincinnati.	Hamburg-American Line	Passenger and cargo	To United States Navy	4,597.86		1,385,730.00
Clara Mennig.	Others	Steel cargo	Sold	119,312.74	286,000.00	99,200.00
Coblenz.	North German Lloyd	do	do	430,237.92	400,000.00	92,440.00
Dalbek.	Others	Sailing	do	44,846.99	57,062.50	32,370.00
Darvel.	North German Lloyd	Steel cargo	Stranded (insured)		370,445.92	67,230.00
Emshorn.	Others	do	Sold	148,810.18	84,166.66	210,630.00
Elsass.	North German Lloyd	do	do	212,370.08	539,328.34	469,810.00
Esslingen.	Others	do	Buried and sunk	240,023.83	463,500.00	243,888.00
Friedrich der Grosse.	North German Lloyd	Passenger and cargo	In operation	237,884.11		432,620.00
George Washington.	do	do	Sold	38,411.04		2,357,300.00
Gouverneur Jaeschke.	Hamburg-American Line	Steel cargo	Sold	170,352.79	225,000.00	46,700.00
Grosser Kurfurst.	North German Lloyd	Passenger and cargo	do	532,890.88	100,000.00	606,350.00
Grunewald.	Hamburg-American Line	do	do		187,500.00	239,300.00
Hamburg.	do	Laid up		142,482.18	50,000.00	448,930.00
Harburg.	Others	Steel cargo	Sold	220,254.06	143,446.66	105,660.00
Holssatia.	Hamburg-American Line	do	Sunk (no insurance)	241,467.90		249,900.00
Indra.	Others	Sailing	Sold	64,280.61	24,583.34	27,910.00
Johanne.	do	Steel cargo	do		174,600.00	63,170.00
Kaiser Wilhelm II.	North German Lloyd	Passenger and cargo	Laid up	105,539.63		1,178,160.00
Kolin.	do	do	Sold	348,022.90	18,965.52	184,140.00
Konig Wilhelm II.	Hamburg-American Line	do	To War Department	129,084.49		719,100.00
Kronprinzessin Cecilie.	North German Lloyd	do	Laid up	598,158.08		1,765,960.00
Kronprinz Wilhelm.	do	do	Sold	1,865.82	35,000.00	

Kurt (dreadnought)	Others	Sailing	do	36,006.71	80,907.06	84,230.00
Loengoon	Hamburg-American Line	Steel cargo	do	139,532.19	51,937.50	34,500.00
Lyemoon	do	do	Stranded (insured)	226,687.60	550,000.00	31,390.00
Magdeburg	Others	do	Sold	188,585.23	43,103.45	112,310.00
Maia	do	do	do	74,494.45	143,168.77	101,200.00
Mark	North German Lloyd	do	do	183,323.39	478,125.00	362,940.00
Martha Washington	Others	Passenger and cargo	do	31,870.87	60,000.00	822,000.00
Marudu	North German Lloyd	Steel cargo	do		250,000.00	67,800.00
Matador	Others	Sailing	Stranded (no insurance)	105,752.48		360,710.00
Nassovia	Hamburg-American Line	Steel cargo	Sold	114,186.09	150,218.54	94,970.00
Neckar	North German Lloyd	Passenger and cargo	Laid up			424,280.00
Ockenfels	Others	Steel cargo	Sold	117,781.70	172,666.66	252,980.00
O. J. D. Ahlers	do	do	do	261,271.99	516,679.58	283,080.00
Ottawa	do	Sailing	do	48,532.73	48,862.50	30,300.00
Pennsylvania	Hamburg-American Line	Passenger and cargo	do	538,102.38	8,000.00	408,830.00
Pisa	do	Steel cargo	do	184,946.43	66,198.36	84,380.00
Pollux	Others	Tug	do	18,515.59	21,000.00	
Pommern	North German Lloyd	Steel cargo	To United States Navy	278,932.44		518,810.00
Pontong	do	do	Sold	313.39	23,000.00	76,420.00
Portonia	Others	do	do	97,579.48	62,245.00	89,100.00
President Grant	Hamburg-American Line	Passenger and cargo	In operation	240,024.09		1,248,680.00
President Lincoln	do	do	To United States Navy (sunk)	136,504.69		1,266,420.00
Princess Alice	North German Lloyd	do	Sold	372,355.75	60,000.00	506,780.00
Prinz Eitel Friedrich	do	Steel cargo	do		800,000.00	
Prinz Joachim	Hamburg-American Line	Passenger and cargo	do	372,116.11	60,000.00	142,400.00
Prinz Oskar	do	do	do	443,020.55	185,000.00	167,130.00
Prinz Sigismund	do	do	Laid up	191,870.37		200,150.00
Prinz Waldemar	North German Lloyd	Steel cargo	Sold		157,500.00	137,810.00
Prinzess Irene	do	Passengers and cargo	do	231,117.95	445,000.00	100,430.00
Rajah	do	Steel cargo	do		100,100.00	503,460.00
Rhaetia	Hamburg-American Line	do	Passengers and cargo	57,242.19	40,625.00	64,970.00
Rhein	North German Lloyd	do	do	250,240.50	14,778.07	253,320.00
Sachsen	Hamburg-American Line	do	Laid up	21,483.73		397,580.00
Sachsenwald	do	Steel cargo	To War Department (sunk)	247,056.20		487,700.00
Sambia	do	do	Sold		187,600.00	124,200.00
Savonia	do	do	do	293,494.34	40,000.00	102,730.00
Serapis	Others	do	do		187,500.00	34,870.00
Setos	do	do	do	121,988.33	224,560.00	136,270.00
Staatssekretär Kraetke	Hamburg-American Line	Passengers and cargo	do	316,321.98	254,190.00	130,210.00
Steinbek	Others	do	do	61,885.13	300,000.00	77,400.00
Suevia	Hamburg-American Line	Sailing	do	22,101.27	30,833.33	36,800.00
Tsintan	North German Lloyd	Steel cargo	do	228,349.81	139,000.00	146,150.00
Tubingen	do	do	do	155,341.56	275,000.00	45,820.00
Vaterland	Hamburg-American Line	Passengers and cargo	In operation	157,175.79	218,750.00	132,990.00
Wiegard	Others	Steel cargo	Sold	6,241,624.67		7,020,260.00
Willehad	North German Lloyd	do	do		27,500.00	26,560.00
Wittekind	do	Passengers and cargo	do	193,072.27	14,000.00	59,100.00
Total				332,773.91	9,700.00	112,130.00
				20,524,666.53	12,913,712.94	33,530,718.00

SUMMARY

Status	Number of vessels				Cost to United States Shipping Board	Proceeds of sales or insurance collected
	Hamburg-American Line	North German Lloyd	Other companies	Total		
Sold	22	19	23	64	\$9,335,453.91	\$10,149,547.02
Sold and repossessed	1			1	142,482.18	50,000.00
Lost:						
Insured	2	1	1	4	639,035.05	2,714,165.92
- Uninsured	1	1	2	4	680,506.80	
In operation	3	1		4	7,755,751.19	
Laid up	2	4		6	1,174,220.09	
Delivered to Navy	2	1	1	4	421,085.53	
Delivered to War Department	2			2	376,139.69	
Total	35	27	27	89	20,524,666.53	12,913,712.94

Ex-owner	Cost to United States Shipping Board	Proceeds of sale or insurance collected	Appraised value in 1917
Hamburg-American Line	\$13,155,935.85	\$3,620,755.31	\$17,548,410.00
North German Lloyd	4,556,690.02	4,527,522.54	11,104,090.00
Others	2,812,040.66	4,739,435.09	4,878,218.00
	20,524,666.53	12,913,712.94	33,530,718.00

¹ Includes the *Vaterland* (*Leviathan*), on which \$6,241,024.67 expenditures have been capitalized and which is in operation at present.

The CHAIRMAN. "Cost to United States Shipping Board, \$177,420.75." That is expenditures for reconditioning.

Mr. NEAGLE. Is that the *Adamsturm*?

The CHAIRMAN. Yes. Is that correct?

Mr. NEAGLE. This says \$179,189.

The CHAIRMAN. It says here "\$177,420.75."

Now, the proceeds of sale or insurance collected was \$1,120,320. The appraised value in 1917 was \$209,650; so we made considerable money on that boat.

Senator JONES of New Mexico. Yes; and apparently it is about the only one we did make any money out of.

The CHAIRMAN. Oh, no, Senator. Some of them—

Senator JONES of New Mexico. Just follow through the list, and you will find that we did not make any money..

The CHAIRMAN. You mean as a total?

Senator JONES of New Mexico. Yes.

The CHAIRMAN. I have not looked that up; but there are some of them—well, this is about as extreme a case as there is.

Senator JONES of New Mexico. First, I should like to ask with regard to this appraisement here. If the witness will turn to the McCarl report, he will see that some of these vessels were not appraised, according to this report; and I should like to know if you have examined this report?

Mr. NEAGLE. I have not observed this report at all.

Senator JONES of New Mexico. In the first place, there are three barges here which apparently were not appraised by the commission; at any rate, no amount of appraisal is put in this report.

Mr. NEAGLE. I do not know how they were gotten possession of. Were they seized under that?

Senator JONES of New Mexico. This is all I know about them.

Mr. NEAGLE. I mean, does it show that they are?

Senator JONES of New Mexico. Yes; and you will notice that in the last column there is a list of the amounts of the various appraisals, and there are a few blanks in the righthand column, the farthest column.

Mr. NEAGLE. "Burned and sunk"—that does not show when.

Senator JONES of New Mexico. The farthest column.

Mr. NEAGLE. I have that, sir.

Senator JONES of New Mexico. No; I think you are pointing to the middle column.

Mr. NEAGLE. "Appraised value in 1917?"

Senator JONES of New Mexico. Yes, sir; appraised value. You will see that there are three blanks there. Those vessels have no appraised value set opposite them by Mr. McCarl in his report.

Mr. NEAGLE. That vessel was sold. The sale price was \$3,833.33. The CHAIRMAN. That is what that report says.

Mr. NEAGLE. The amount of reconditioning is twenty-six thousand and something. The Navy appraisal is blank.

Senator JONES of New Mexico. That is what I wanted to get at.

Mr. NEAGLE. Yes. Now, why that is, I can not say.

Senator JONES of New Mexico. I see. If you will follow down that righthand column, at the bottom of the first page you will see the *Kronprinz Wilhelm*, a North German Lloyd steamer. It was reconditioned, according to this report, at a cost of \$1,865.82, and the receipts upon the sale of it were \$35,000, but no appraisal.

Mr. NEAGLE. The expenditure shown here is \$5,166 in the Shipping Board's report.

Senator JONES of New Mexico. I think probably I had better explain that Mr. McCarl, in his report here, states that the expenditures by the Shipping Board, as stated in this report, constitute only capital expenditures, and not disbursements for any purpose which would not be considered a capital expenditure, or, in other words, an improvement of the vessel, as I interpret it; and there may have been other expenditures in connection with the ship but not included in Mr. McCarl's figures.

The CHAIRMAN. If you have a copy of this that you could leave with me, I will put it here, and then, with two, we can find out something about it.

Mr. NEAGLE. This was gotten for the purpose.

Senator JONES of New Mexico. Then farther down on the second page is another tug which was not appraised, and then comes a ship, the *Prinz Eitel Friedrich*, belonging to the North German Lloyd Co., as to which the proceeds received by the Shipping Board were \$800,000. That ship does not appear to have been appraised by the Shipping Board, nor any expenditures by the Shipping Board in putting it in condition, but there are receipts there of \$800,000 on account of that ship.

The CHAIRMAN. What does this show?

Mr. NEAGLE. The *Prinz Eitel Friedrich* is North German Lloyd owned; amount claimed, naval appraisal, \$142,400.

Senator REED of Pennsylvania. That is the *Prinz Eitel Friedrich* of the Hambrug-American Line that you are reading there.

Mr. NEAGLE. This is the North German Lloyd vessel. The other one is the *Prinz Eitel Friedrich* of the Hamburg-American Line.

Senator JONES of New Mexico. I am speaking with reference to the *Prinz Eitel Friedrich* owned by the North German Lloyd Line.

Mr. NEAGLE. That was valued by the naval board at \$142,400.

The CHAIRMAN. But the Navy board—it does not say what it is, here.

Senator JONES of New Mexico. Mr. McCarl does not have that in his table, at all.

Mr. NEAGLE. There are two *Prinz Eitel Friedrichs*.

The CHAIRMAN. Oh, yes, I see; there are two of them.

Mr. NEAGLE. One is the *Prinz Eitel Friedrich* of the Hamburg-American Line. That was not appraised.

Senator JONES of New Mexico. Oh, the Hamburg-American Line vessel was not appraised?

Mr. NEAGLE. It was not appraised.

Senator JONES of New Mexico. Then the appraisal here—

Mr. NEAGLE. But that vessel was sold for \$60,000.

Senator JONES of New Mexico. Then the appraisal put down in this—

Mr. NEAGLE. That fits the other ship.

Senator JONES of New Mexico. It is for the other ship.

The CHAIRMAN. They got it, then; the wrong way around?

Mr. NEAGLE. They got it the wrong way around.

Senator JONES of New Mexico. Yes; I see. Now, on that one that was sold for \$60,000, what were the expenditures by the Shipping Board?

Mr. NEAGLE. On the North German Lloyd vessel, \$321; on the other, \$904,131.

The CHAIRMAN. They have \$372,116.11.

Mr. NEAGLE. As I understand, this information here is the same as given to the Comptroller General. How they came to change it, I do not know.

Senator JONES of New Mexico. I am sure I do not.

Mr. NEAGLE. The fact that these vessels were not appraised by the Navy board is probably accounted for by the fact that they were not in some American port at the time. I do not know where they were interned when the board took them, but they were seized somewhere; so the board, it seems to me, should have had a chance at them.

The CHAIRMAN. Were those that were in the Philippines appraised?

Mr. NEAGLE. For instance, take the *Secretary of State Solf*. That was in Samoa, and was not appraised. That was a gunboat. That was not appraised by the board. That is because it was not in the United States. Now, that *Prinz Eitel Friedrich* may have been in some port not an American port.

The CHAIRMAN. We had some in the Philippine Islands, and I was wondering whether you appraised them there.

Mr. NEAGLE. No; this board did not appraise them there, as I understand. That may account for the lack of appraisal.

The CHAIRMAN. Did you appraise the ones that were at Honolulu?

Mr. NEAGLE. Which one was that?

The CHAIRMAN. There was more than one.

Mr. NEAGLE. I can get the information on that for the committee and furnish it very easily, showing why they were not appraised.

Senator JONES of New Mexico. I think the committee ought to have a statement of these vessels which were taken over by the Navy and not appraised; and I wish the witness would check over this list in Mr. McCarl's report and see what changes have been made. Evidently the expenditures by the Shipping Board are quite different from the expenditures mentioned in Mr. McCarl's report.

Mr. NEAGLE. Yes.

Senator JONES of New Mexico. I take it that he has in some manner attempted to fix the amount of such expenditures as should be charged to capital cost. I judge that from his statement here; but I wish you would make up a list showing all of those expenditures by the Shipping Board as you have it, and if you can furnish us some explanation as to why those expenditures have been separated in the McCarl report we should like information on that subject. In other words, we should like you to check over the McCarl report and let us know what you find.

Now, Mr. Neagle, you say that there is in the custody of the Navy Department the itemized basis on which this appraisal was made for each of these ships?

Mr. NEAGLE. The board has a great many papers and information concerning the ships; and while I can not say to what extent that goes, just what the detail is, those papers are available. They are on file in the department.

Senator JONES of New Mexico. Do you happen to have any knowledge, yourself, as to the condition of those ships at the time they were seized?

Mr. NEAGLE. No, sir. All the information on that would be in those papers.

Senator JONES of New Mexico. Who of the Shipping Board could give us information in that respect, in a general way, at least?

Mr. NEAGLE. I think that would come from somebody in the Navy rather than the Shipping Board, because it was the Navy people that made the examination of the ship at the time.

Senator JONES of New Mexico. Did not the Shipping Board examine the ships themselves?

Mr. NEAGLE. I do not doubt that they did; probably they did; yes, sir.

Senator JONES of New Mexico. I wish you would find out, if you will, who can give us information on that subject.

Mr. NEAGLE. Somebody who can come here and talk to you about it?

Senator JONES of New Mexico. Somebody who can come as a witness and tell the committee about it.

Mr. NEAGLE. Yes, sir; I will find out.

The CHAIRMAN. Will you have him here to-morrow morning at 10 o'clock?

Mr. NEAGLE. Yes, sir.

Senator JONES of New Mexico. Did you have any part in connection with this board of appraisers, as to its work? Did you assist it in any way?

Mr. NEAGLE. No, sir; not at all.

Senator JONES of New Mexico. How was your connection with the subject reached?

Mr. NEAGLE. Only because I am in the law office of the department, and this matter seems to have a sort of legal aspect.

Senator JONES of New Mexico. I see.

Mr. NEAGLE. The physical, technical part of it was not done in the office I am in at all.

Senator JONES of New Mexico. Then you would not be able to testify from first-hand information as to the factors which entered into this appraisal, nor the necessity for accepting this appraisal at this time; would you?

Mr. NEAGLE. No, sir; not at all.

Senator JONES of New Mexico. Your general impression, however, as stated by you before the Committee on Ways and Means, if I recollect it, was that it would be impossible now to get the information from which to make the appraisal?

Mr. NEAGLE. Hardly so strong as "impossible." It would be difficult, very difficult. The statement I made was based on the idea that the reasonable, convenient, and reliable way to arrive at that value would be to take the work done by the people who made the examination at the time, and had a first-hand view of the ship and its condition.

Senator JONES of New Mexico. I think that probably is all that this witness can tell us; and if you will kindly furnish us the name of one or more persons who did make an actual investigation of the condition of the ships, and can tell us what factors entered into this appraisal, we should like to have it.

Mr. NEAGLE. Captain Gill and one other member of the board have died since then.

The CHAIRMAN. Then send up one man.

Mr. NEAGLE. They undoubtedly had assistants who worked with them, and I think I can find somebody.

(Whereupon, at 12 o'clock meridian, the committee adjourned until to-morrow, Friday, January 21, 1927, at 10 o'clock a. m.).

RETURN OF ALIEN PROPERTY

FRIDAY, JANUARY 21, 1927

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

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

Present: Senators Smoot (chairman), McLean, Curtis, Reed of Pennsylvania, Shortridge, Edge, Jones of New Mexico, Gerry, Harrison, Bayard, George, King, and Walsh of Massachusetts.

The CHAIRMAN. If the committee will come to order we will resume our hearing on the return of alien property. Captain Robert, will you kindly give your full name, position, and address for the purpose of the record?

TESTIMONY OF CAPT. WILLIAM P. ROBERT, CONSTRUCTION CORPS, UNITED STATES NAVY, ON DUTY IN THE NAVY DEPARTMENT, WASHINGTON, D. C.

The CHAIRMAN. Senator Jones, you asked that this witness be here this morning.

Senator JONES of New Mexico. Captain Robert, I understand that you were connected with the appraisement of ships which were taken over by the United States Government soon after we entered the World War.

Captain ROBERT. Yes, sir: I was a member of the board of appraisement, appointed by the President in pursuance of the joint resolution of Congress of May 12, 1917.

Senator JONES. I wish you would tell us now how that board was organized, and in a general way the condition of the ships as you found them, and how the appraisal was made by the board.

Captain ROBERT. In pursuance of the joint resolution of Congress the President appointed a board of five naval officers, at least one of whom was a reserve officer who had formerly been in the service and was at that time a shipping man well up in shipping matters, particularly in matters of ship building and ship brokerage. That man was Mr. D. H. Cox.

Senator HARRISON. Who were the other members of the board?

The CHAIRMAN. That was all put in the record on yesterday.

Senator HARRISON. All right. Never mind.

Captain ROBERT. This board upon appointment proceeded to study the precept of the joint resolution and to establish a general basis for its work. The question of the value of ships at that time, and particularly following that period, was one rather difficult to ascer-

tain. As we all know, vessels capable of ploughing the high seas soon became extremely scarce and very valuable. We therefore followed very strictly the wording of the joint resolution of Congress. We considered it necessary to establish unit values for the average ship when new, and, what was of great importance, to establish a curve of depreciation. That was necessary in order to establish the value as far as we could determine it of any ship of a given age.

The CHAIRMAN. Was that curve of depreciation always based upon the age of the ship?

Captain ROBERT. The curve of depreciation that we established was a curve which, as nearly as we could determine, represented the percentage of value of a ship of any given age to the value of that ship when new.

The CHAIRMAN. On the same basis that they took depreciation of a ship by any corporation operating it?

Captain ROBERT. Yes, sir.

The CHAIRMAN. You followed the same practice that is followed in ordinary shipping circles?

Captain ROBERT. As nearly as we could, yes, sir.

Senator BAYARD. And your opinion was also based upon consideration of this fact: The power of the then owners, or the availability of the power of the then owners, to sell in the American market?

Captain ROBERT. I will try to answer that as I proceed, Senator Bayard. I want to give it to you in exactly the light of your question but will come to that in just a minute if I may.

Senator BAYARD. All right.

Captain ROBERT. We established a curve by first establishing, from such records as we could obtain, and there were considerable records in the various trade channels and others that were available, of which I can not after 10 years recall the exact sources; but we did determine as nearly as possible the sale value of a ship, which might be called an average tramp steamer of about 10 to 11 knots an hour, and about 6,500 tons dead-weight capacity, which we considered was about the average ship, and which would represent a large number of the ships that we had under consideration.

As I say, we determined from those records as nearly as we could the sale value as of 1914 of ships of varying ages, extending back over 40 years. We found that the sale value vanished at about that point, that is to say, that a ship nearly 40 years old would have had almost no sale value, and naturally there were not very many records that we could get of ships of that age being sold. But we had data giving sale values as of about 1914 of a considerable number of ships of varying ages. Therefore, from all the data we could get, we established a curve of average values of a 10½ knot cargo ship of about 6,500 dead-weight tons displacement. The values from which we completed the curve were values per dead-weight ton. My recollection is that we naturally used for the new ships, that is, for the end of this curve, ships zero years old, which data we had of new ships being contract values.

The CHAIRMAN. Did you speak of ships 40 years old?

Captain ROBERT. I am referring to ships from 40 years old down to zero years old, the zero ships being new ships, of course. My recol-

lection is that we got such data as was available of contract values for the new ships.

The CHAIRMAN. All right, you may go on.

Captain ROBERT. Having established that curve, it was a very simple matter to take the proportion of the value of a ship of any age and divide it by the estimated value of the new ship in order to get the percentage of the value of a ship of a given number of years of age.

The CHAIRMAN. In other words, you took the average depreciation.

Captain ROBERT. Yes; the difference between the value of a ship of a given number of years and the value of a new ship. That would be the depreciated value of the ship under consideration.

The CHAIRMAN. All right.

Captain ROBERT. Having established that curve, which we might call the curve of depreciation, we then from time to time inspected the various ships. There were, I think, something like 90 to 100 of them. We would go over a ship as thoroughly as we could in the time available, and get a general idea, which necessarily was based on judgment, as to whether any particular ship of a known age, was equal to, better than, or worse than what we felt should be the condition of the average ship of that age.

For example, if the curve of depreciation would indicate that the ship we were inspecting would have 80 per cent of the value of a new ship, and we found that particular ship to be materially better than what an average ship of that age would be, we would arbitrarily, in accordance with the best judgment we could bring to bear, increase the percentage value of that particular ship. Or if that particular ship had the appearance of having been very poorly cared for, and allowed to run down, we would correspondingly place the value on that particular ship below the value as determined by the curve of depreciation. But in many cases doubtless we found, and I do not remember just at the moment how many cases, but I would say that in a majority of the cases we found that ships were practically on the curve, because we were dealing with a curve of averages.

Having established by our first curve the estimated average value of a new ship, and having determined that any ship in question was worth about such and such percentage of that value as a whole, we would consider the sabotage as affecting the machinery. If the machinery were estimated to represent about 30 per cent of the value of the ship as a whole from the figure that we had found as the approximate value of the ship, we would ascertain the value of the machinery, and then in a general way estimate as nearly as we could, first, whether that machinery was in particularly good condition, or in particularly poor condition, and add to or subtract from, as might be necessary, the otherwise estimated value of the machinery; and also subtract the estimated cost of any repairs made necessary by the damage done by the agents of the shipowner by way of sabotage.

Senator JONES of New Mexico. Could you at this particular point advise the committee of the general condition of those ships that were seized, and to what extent they were destroyed? I mean, as far as they could destroy them without sinking them.

Captain ROBERT. Yes; but may I just add one word to my previous statement first?

Senator JONES of New Mexico. Yes.

Captain ROBERT. In addition to this cost data just described we ascertained whether the ship had on board any cargo such as coal stores or any other articles of any unusual value. And, for example, as in the case of the *Vaterland*, and possibly a few others there were elaborate paintings and hangings and furnishings, so that as far as we could we included in the final figure for each ship the value of the contents of the ship, in accordance with the joint resolution, which required that it shall be the duty of the board "to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking * * *."

I believe the question was asked that I state in general to what extent the vessels were wrecked by the wanton acts of the crews. The favorite act appeared to be that of drilling holes into the walls of the largest cylinder, and using a drift bolt and sledge hammer to break out sections of the cylinder proper, the idea being that it would take at any rate a very considerable length of time to cast new cylinders of the largest size. The wreckage in some cases extended also to other parts of ships; for instance, some cheap part might be thrown overboard, but the damage I have just mentioned seemed to be the favorite one. One would assume that probably it was done by general consent among those concerned, that that would be the easiest thing to accomplish a bad wrecking of the ships.

The CHAIRMAN. It went directly to the heart of the ship.

Captain ROBERT. It went directly to the motive power.

Senator JONES of New Mexico. Make it as plain as you can just what that act meant. You spoke of cylinders, and of drilling into cylinders. I wish you would describe that a little more particularly so that the average layman may get the idea.

Captain ROBERT. The cylinders of some ships were very large in diameter, so large that to cast one would involve not only the making of a very large pattern but require very intricate work, and would also require machinery of large capacity.

The CHAIRMAN. And a considerable length of time.

Captain ROBERT. And a correspondingly long time. We may consider the enormous cylinder as to diameter and length, if we compare it to this table—

Senator JONES of New Mexico (interposing). Indicate that in feet so that it may show in the record.

Captain ROBERT. Oh, we will say 4 to 6 feet.

Senator McLEAN. By cylinder do you mean what I would consider the boiler?

Captain ROBERT. No, sir; in general, the main motive power of the ship. The cylinder is what I mean, inside of which is the reciprocating piston, the cylinder containing the steam.

Senator McLEAN. I understand now.

Captain ROBERT. If we consider a section of that, say, around the perimeter of the top, 3 feet, and let us consider a section cut diagonally this way, 3 feet below that point, and let us suppose that they drilled all the way along that line, holes close together, and all the way along this line, to weaken it, and then took a large drift pin, a pin with the small end of it slightly smaller than the drill, and with the large end much larger, and use that, with which they could exercise a great deal of force.

Senator McLEAN. It is the same relation to a ship that a cylinder is in an automobile.

Captain ROBERT. Yes, sir. They then took a sledge hammer, or some other kind of hammer, and hammered it until they cracked it. Then that cylinder was done for for that ship, was their idea. But they were not correct in all respects in that matter, because we developed a means of repairing those cylinders in fairly good shape within a short space of time, casting a piece to correspond to the piece cut out, cleaning up the holes, and then either welding it in or repairing it with patch pieces, so that as a matter of fact we got those ships in service within a comparatively short length of time afterwards.

Senator McLEAN. You took that into consideration, probably, when you fixed the value of the ship?

Captain ROBERT. Yes, sir.

Senator McLEAN. The cost of reinstating the ship?

Captain ROBERT. Yes, sir.

The CHAIRMAN. You put in a patch covering the whole damaged part?

Captain ROBERT. Yes, sir; as a rule, that is the way it was done.

Senator McLEAN. In many cases the wrecked part represented a very large percentage of the value of the ship?

Captain ROBERT. No, sir; a comparatively small proportion. As a matter of fact, the value of a ship as we determined it was not very much reduced by this, because naturally this was of comparatively small value.

Senator McLEAN. There was no exaggeration of that depreciation in your estimate?

Captain ROBERT. No, sir. I believe I have not fully answered your question, Senator Jones. The joint resolution specified that it should be the duty of the board to ascertain the actual value of ships, etc., at the time of their taking. Having in mind that the ships of the world were beginning to be extremely valuable, we felt that we had no alternative but to take as a basis for our work the values of ships that had been sold shortly before. One might say that these ships when interned had no commercial value, and one might say that some time after they were put into service they would have very great value, because ships were being sunk so rapidly that values were rising very fast.

Senator BAYARD. You took that as their value at that time, with all those conditions affecting them?

Captain ROBERT. As of 1914, the commercial value of ships as sold.

Senator REED of Pennsylvania. As of 1914?

Captain ROBERT. Yes, sir.

The CHAIRMAN. Why as of 1914?

Captain ROBERT. We had data up to 1914, and that was the beginning of the war. After that it was not so simple a matter to get data, and ships began then to appreciate in a way that was so intangible as to value that we could not use any such data very well.

The CHAIRMAN. Could you give the committee an estimate, and I know you could not give it positively, as to the value per dead-weight ton of a ship at the date that you appraised these boats, and on the date that we declared war, April 6, 1917?

Captain ROBERT. I can give it to you, approximately, by stating the unit value per dead-weight ton that our board used for ships of about 10 to 10½ knots an hour and of about 6,500 tons dead weight—in other words, the tramp ship of that kind. The figure that we found from sales and from contracts, etc., was about \$34 a dead-weight ton.

The CHAIRMAN. That is as to 1914?

Captain ROBERT. Yes, sir.

The CHAIRMAN. What was it in 1917?

Captain ROBERT. In 1917 a ship that was capable of going to sea freely was worth a figure that was too uncertain for me to attempt to state it. I have not looked that up for a long while, and, in fact, have not thought of it.

The CHAIRMAN. And if you went up into the latter part of the year 1917 you would have a value running all the way from \$200 a dead-weight ton to \$225 a dead-weight ton?

Captain ROBERT. Yes, sir.

The CHAIRMAN. I thought maybe you had followed it closely enough and could remember just about the time we declared war what it was.

Captain ROBERT. I would not be able to state any figures, because at one time it would be one thing under one condition and at another time it would be something else under other conditions. In fact, it would be one thing under one condition and another thing under other conditions at one and the same time.

Senator HARRISON. It was considerably higher.

Captain ROBERT. Yes, sir.

Senator HARRISON. And the resolution directed that it would be upon the value of when they were taken, which was in 1917.

Senator CURTIS. Oh, no; they were taken in 1914.

Captain ROBERT. No, sir; we took them in 1914. We were confronted by that very question that you bring up, and we felt we must follow as nearly as we could the wording of the resolution. The ships were interned in 1914, and the commercial value of a ship in the years 1917 and 1918 was whatever one could get for them; it was in no sense an established figure.

Senator HARRISON. Was the Government operating then, in 1917?

Captain ROBERT. As soon after that time as we could we put a good many of them into service. Some of them took 4 or 5 or even 6 to 8 months in the case of the larger ones, such as the *Vaterland* and so on. I do not remember how long she required for reconditioning but some were repaired within a short space of time, and as soon as they could be used they were used.

Senator HARRISON. You took them over in 1914, but did not commence making repairs on them until 1917?

Captain ROBERT. Yes, sir.

Senator HARRISON. So they lay idle about three years?

Captain ROBERT. Yes, sir.

Senator HARRISON. When did you make this investigation?

Captain ROBERT. Shortly after our declaration of war.

Senator HARRISON. So there was a period of three years after they were interned before you made your investigation?

Captain ROBERT. Yes, sir; if you consider that they were interned in 1914, as we felt we must follow the resolution.

Senator MCLEAN. What care did they have in the meantime?

Captain ROBERT. Some had excellent care, and some very indifferent care.

Senator MCLEAN. Did you consider that as reducing their value in your estimation; and if so, where did you place the responsibility?

Senator JONES of New Mexico. Senator McLean, the witness has already stated all those things were taken into consideration in establishing a value above or below the curve of depreciation, which curve he fully described a while ago.

Senator MCLEAN. All right.

Senator HARRISON. I have understood that some of these ships were sold for a very large percentage more than the appraised value. Do you know anything about that?

Captain ROBERT. I do not personally, but I do not doubt that they may have been so sold afterwards, because ships did increase so greatly in value that they could be sold for very considerable sums. During the course of the war they reached a figure much greater than we gave as an estimated value in pursuance of the joint resolution of Congress.

The CHAIRMAN. But taking the whole sales into consideration and considering the valuations placed upon the ships by your board, and the cost of reconditioning those ships by our Government, the sales fall a little short of the valuation that was placed upon the boats by our board.

Senator REED of Pennsylvania. But in considering that you have to remember that some of them have never been sold, like the *Vaterland*, and if all the ships had been sold it would probably have run to a much greater figure.

The CHAIRMAN. There are a few ships that were held, and perhaps as Senator Reed says, if sold, that would bring the price to greater than the estimated value.

Senator HARRISON. Was any of these boats ever sunk after we got into the war?

Captain ROBERT. Yes, sir; I remember the first one on the list, the *Adamsturm*, was sunk by the Germans, and I think a good many others.

The CHAIRMAN. I call to the attention of the committee that we may find on page 66 of Senate document 182, a complete list of the ships taken over by the United States Shipping Board, and all the information given as to whether they were sunk, what they are doing now, the valuation of them, the amounts spent on them by the Government by way of reconditioning, and the amounts of sales where sold.

Senator REED of Pennsylvania. I do not know whether you have taken up the language of this joint resolution of May 12, 1917, but I notice that in the first section it says "The President is authorized to take over" certain vessels which are within the jurisdiction of the United States. Then, section 2 provides "That the Secretary of the Navy shall appoint a board to ascertain the actual value at the time of the taking."

The CHAIRMAN. He has explained that in detail.

Senator REED of Pennsylvania. I believe you said that your board did not consider that the word "taking" in section 2 referred to

the taking which was authorized in section 1. Has he explained that?

The CHAIRMAN. No, not in that form.

Senator REED of Pennsylvania. It was evident from the language of section 1 that the internment of these ships was not regarded as the taking over, and I do not see how it could be, because the ships were left in the possession of their German crews and merely were denied clearance. Here is authority for the President in the future, after May 12, 1917, to take over, and then section 2 requires a finding of the value at the time of the taking.

Senator HARRISON. Your construction would be that it ought to be the appraised value of 1917 and not of 1914.

Senator CURTIS. Oh, that would be unfair to our Government.

Senator BAYARD. That taking over would explain itself, and the internment under the terms of the joint resolution would explain itself. They were tied up under our law as interned ships.

Senator REED of Pennsylvania. As to the time of taking Congress obviously meant after May 12, 1917. I do not know whether that would call for a higher value than the 1914 value or not, because in 1914 those were free ships, capable of use any place on the globe, while on May 12, 1917, they were interned ships which could not get clearance, and had no usefulness until the expiration of the war, which was some vague date in the future. So the value of these ships in 1917 was not to be determined according to the world market by any means, because they were not capable of being put into world trade.

The CHAIRMAN. They were not free ships. They were tied up and could not go into service.

Senator REED of Pennsylvania. That is what I say. They were interned ships, and the market value of interned ships was very much less than the world market value of free ships. But the board had this matter to consider, I take it, and I wish to ask: Did the board try in any way to regard them from that standpoint?

Captain ROBERT. The board considered most carefully and most earnestly the questions you have just enunciated, and it was necessary for the board to carry out what it felt were the requirements of the joint resolution, both as to the wording of it and the spirit of it; it felt that to appraise these vessels that had been tied up, as having no value, would be manifestly not in accordance with the spirit of the resolution: and, on the other hand, to appraise them, as having a value of some particular sale at a time when values were not in any sense stabilized would be unfair, such as in some cases of ships that were free to go on the high seas, bringing excessively high prices. All these things were most earnestly considered by the board, and it finally decided that the sales results and the contract prices for ships at the time the war broke out in Europe was in the board's opinion as nearly as could be taken a proper basis for complying with this joint resolution.

Senator REED of Pennsylvania. Did the board consider then that the 1914 value represented the value to the German owner of a ship in the location and the condition in which it was in 1917?

Captain ROBERT. I did not understand that inquiry.

Senator REED of Pennsylvania. Let me put it in this way: Suppose that the German owner had been able to advertise and sell his ship

at public auction, I mean his interned ship in an American harbor, somebody would have been willing to pay something for his title to that ship, I presume.

Senator SHORTRIDGE. Do you mean in 1914, or in 1917?

Senator REED of Pennsylvania. I mean in 1917.

Captain ROBERT. We considered that point, and realized that the German Government could not give title to these ships in such manner, and if so bought they would have certainly no value to the purchasers until this Government of ours did in some way free them.

Senator REED of Pennsylvania. Presumably the war would end some day, and if the German owner could sell his ship free to use at the expiration of the war it had some value.

Captain ROBERT. I think, sir, that condition did not exist, because these ships were actually in the custody of this Government, which was at war with the Government of the owners of those ships, and this Government naturally could not have been expected to release them for such a sale as that. I do not know whether I have fully explained what you wanted or not.

Senator REED of Pennsylvania. I do not think you have caught my question at all. Everybody knew that this Government was not going to release them; everybody knew that the German owner could not get any use or income from his ship until the war was over; and yet at some dim date in the future that article of property had a value, which was reflected as of that moment; his expectancy, you might call it, was worth something.

Captain ROBERT. The expectancy was, I might say, realized by the value that the board appointed by the President placed on the ship, if that value that the board placed was ultimately used that has been supposed to be used under the joint resolution.

Senator REED of Pennsylvania. That is what I am driving at. But the figure that you put on these ships in your judgment represented their value to the German owner on May 12, 1917.

Senator MCLEAN. Subject to the hazards that then existed.

Senator REED of Pennsylvania. Yes, subject to the war, and to internment, and to incumbrances resting upon its title.

Captain ROBERT. I think I might just answer that question by saying that we endeavored to settle the matter by giving it the commercial value that the ship had on the basis of the time of internment, as slightly modified—

Senator REED of Pennsylvania (interposing). That is not an answer to my question.

Captain ROBERT. No, sir; it is not, but—

Senator REED of Pennsylvania (interposing). What this committee is concerned with is payment to the German owner of the value of his ship at the time we took it. What I am trying to find out is whether the 1914 value in your judgment expresses the value to him in 1917 under all the circumstances. Had it been on the world market at the time and free for charter obviously it would not have been.

Captain ROBERT. Yes, sir; that was as nearly as we could ascertain it in our judgment the value of the ships.

The CHAIRMAN. In other words, on April, 1917, if the Government of the United States had released the ships and sold them, which

of course it would not have done, for those ships could not be used until the close of the war, your estimate of the value of the ships was such that it would cover those conditions, that they could not be used until the close of the war.

Captain ROBERT. I would say, sir, that the answer to that question involves considerable speculation as to what the conditions would be at the close of the war, and I can not say now according to my recollection that we viewed it in exactly that manner.

The CHAIRMAN. Well, the value of those ships was about \$34 a dead-weight ton before war was declared.

Senator SHERRIDAN. As of about the 1st of August, 1914.

The CHAIRMAN. Before England declared war.

Senator REED of Pennsylvania. That was their peace time value.

The CHAIRMAN. Now, the question is: Who would want to take the chance of buying those boats when they could not use them until after the close of the war, and pay any more than the estimate that was made by your board. Do you think anybody would have done that?

Captain ROBERT. No, sir; I do not.

Senator EDGAR. Was not the estimate of your board practically \$34 a dead-weight ton?

Captain ROBERT. Yes, sir; for this particular class of ships, and for other ships we gave a different valuation. But for these particular ships—I mean this particular class that I refer to—it was about \$34 a dead-weight ton.

Senator REED of Pennsylvania. These ships were no good to any German owner during war time.

Captain ROBERT. No, sir.

Senator REED of Pennsylvania. For the value to him could not in any event exceed the peace-time value. And you could not tell whether the peace-time value, after the war, I mean, would be greater or less than the 1914 value.

Captain ROBERT. It would necessarily be purely speculative.

Senator REED of Pennsylvania. It would be a wholly speculative proposition.

Captain ROBERT. Yes, sir.

Senator REED of Pennsylvania. A sinking of the ships might diminish the supply of bottoms and put the value up, or the building of ships the way we were going on at the close of the war, might make the supply of bottoms so abundant, as in fact it did, that by the close of the war, or in 1921, I will say, ships were cheaper than in 1914, or practically as cheap. So that you could not speculate during the war on the peace-time value, and that is why you felt compelled to take the pre-war peace-time value; is that it?

Captain ROBERT. Yes, sir.

Senator BAYARD. In other words, the period of interment drove you back to 1914 in arriving at your valuation?

Captain ROBERT. Yes, sir.

Senator JONES of New Mexico. But in arriving at your valuations you took into consideration all the facts and circumstances as indicated by the joint resolution of May 12, 1917?

Captain ROBERT. Yes, sir.

Senator JONES of New Mexico. And used your best judgment in ascertaining the values of these ships under the terms of that joint resolution?

Captain ROBERT. Yes, sir.

Senator HARRISON. Was the board unanimous in fixing its valuations?

Captain ROBERT. I can remember no dissenting vote, sir.

Senator BAYARD. You were unanimous on your principles of appraisement?

Captain ROBERT. I remember no dissenting opinions in our deliberations. Of course, it was 10 years ago and my memory is not clear in regard to all the details, but it is very clear on the general policy that was followed, that the board was without dissension of any kind in regard to the basic matters, that is, in regard to the actual values. And if there was any difference in judgment of several per cent we probably averaged them, but I do not know about that, but I say probably that would have been the way we would have handled it.

Senator BAYARD. After your board agreed on a basis of value was your basis ever submitted to any other body for approval?

Captain ROBERT. No, sir.

Senator BAYARD. That was left entirely to you?

Captain ROBERT. Yes, sir; the joint resolution says these findings shall be considered as competent evidence in all proceedings in any claim, and we felt this was a statutory power given to the board and that it was our duty to shoulder the responsibility in so far as outlined in the joint resolution.

Senator REED of Pennsylvania. What proportion of the ships did the board actually inspect?

Captain ROBERT. I think we inspected practically every one that was interned on the east coast and on the Gulf of Mexico. That is, I mean those that were interned at a distance were inspected by local boards, and detailed reports made to us, and we considered those reports and arrived at a basis of value in accordance with our best judgment.

Senator REED of Pennsylvania. For example, I remember seeing the *Bochum* interned in Hawaii. Your board did not undertake to go out there and examine her.

Captain ROBERT. No, sir. We made no trips across the continent either in connection with this matter. I do not remember that particular ship, but probably a board may have been convened there to examine her and report upon her condition in detail, and send the report to us. That was the case in the matter of numerous vessels.

Senator REED of Pennsylvania. You made the appraisal of these ships, however, in the last analysis.

Captain ROBERT. Yes, sir; we were required to do so because we were the only statutory power under the joint resolution, and it was put up to us as we were the only board appointed by the President.

Senator JONES of New Mexico. You used those local boards for the purpose of furnishing you information?

Captain ROBERT. Information as to physical condition; yes, sir.

Senator JONES of New Mexico. And upon that information your board made the appraisement?

Captain ROBERT. Yes, sir. You will remember that we were at war and it was manifestly a difficult matter for us to take a long trip of that kind to do something that could in great measure be furnished to us by local officials.

The CHAIRMAN. The ships that were sold at a high increase over the valuation as given by your board, were those ships sold during the war when high prices prevailed?

Captain ROBERT. I am without information at this moment in regard to terms or times of sales. I would add, however, that many of these ships had considerable repairs made to them and no doubt elaborate alterations were made which appreciated their value.

The CHAIRMAN. But in some cases there were sales made that were three times the appraised value and of the amounts expended on reconditioning. I simply want to say that they were sold at a time when the value of ships was at the very peak.

Captain ROBERT. And that value was very high immediately after the armistice, as I remember it; and they may very well have been sold during the course of some months following the armistice when ships were greatly needed. But I am without information in detail in regard to that as it is not a matter that comes within my province.

The CHAIRMAN. It must of necessity have been so or else you never could have gotten your money back. The Government would not have received its money back otherwise. In other words, that these ships that were sold at three or four times the amount of their valuation and cost of reconditioning had to be sold then to bring that price, and if they were sold to-day we would not get what we estimated their value to be and the amounts paid for reconditioning.

Senator JONES of New Mexico. I call attention to this fact as stated in Comptroller General McCarl's report:

This statement indicates that the United States Shipping Board realized \$12,913,712.94 for 69 ships, on which the capitalized cost for these particular ships was \$10,116,971.14, exclusive of the cost of ordinary operating repairs and reconditioning, and not including expenditures by the United States Government in the acquisition and the reconditioning of the vessels for transport service, etc., the cost of which was paid from the "national defense fund."

I take it that that means that, as to these 69 ships, the United States Shipping Board expended something over \$10,000,000 in capital improvements—that is, in adding to the original plan or device of the ship—and that in the sale of these 69 ships it only realized something less than \$13,000,000. Taking the column as a whole, as found on pages 66 and 67, I note that the total appraised value as fixed by your board, Captain Robert, is something over \$33,000,000; that the Shipping Board expended in reconditioning all the ships or, rather, in adding to their capital cost, something over \$20,000,000, but that all the ships sold, sunk, or otherwise disposed of brought less than \$13,000,000, and that includes over \$1,120,000, received through insurance from the *Adamsturm*, which was appraised by the board at \$209,650, and where the Shipping Board had expended on it something over \$177,000. That would indicate, would it not, that in the final disposition of these ships the board realized from them very much less than the appraised value of the ships as made by your board?

Captain ROBERT. I would ask that an authoritative answer to such a question be given by the United States Shipping Board, if practicable, as I am not personally familiar with that phase of the subject.

But I think your statement is a correct one as regards the figures published in this Document No. 182, if we add to them the fact that apparently a considerable number of these ships have not yet been sold, and it may be that those are the more valuable ones.

Senator JONES of New Mexico. I was just calling attention especially to the 69 ships referred to there in the McCarl report, which were sold, and that as to those notwithstanding the United States Shipping Board expended over \$10,000,000 in adding to their value as arrived at by your board, yet on the sale they realized less than \$13,000,000, showing that the United States Shipping Board actually obtained for those ships very much less than the price of valuation given by your board.

Senator KING. Are you not in error in assuming, if you did assume, that any ships still on hand might bring a higher price or a larger price than they might have brought some time ago? Is not that assumption wrong, because ships deteriorate, and 10 years or 15 years is substantially the life of these ships, and these ships were taken in 1917, and some of them were old ships then. So that some of these ships that may still remain might be 15 or 20 years old.

Captain ROBERT. Senator, I did not intend to state what in general terms would be the value of the ships not yet sold, because I am without information in regard to that, but I merely tried to point out that the résumé of the situation as stated in the McCarl report referred to by Senator Jones, was apparently a correct statement if to that be added the fact that a number of these ships have not yet been sold, and their value, whatever it may be, is not represented in the proceeds of sale of insurance collected.

Senator JONES of New Mexico. I notice in that tabulation to which we have just been referring some blank spaces in the column giving the appraised value of ships. Is it a fact that your board did not appraise all of the ships?

Captain ROBERT. The board did not appraise the *Kronprinz Wilhelm* and the *Prinz Eitel Friedrich*, because the board was informed by the Navy Department that these ships were armed and in the possession of the German Government, were war vessels, and naturally they were not subject to compensation, and if captured they would be subject to condemnation without compensation.

Senator JONES of New Mexico. I see that there are some other ships mentioned here as not having been appraised by your board. What about them?

Captain ROBERT. As to the *Argus*, *Arni*, *Aroa*, and *Pollux*, our board had no record in regard to them, the first three being barges and the fourth a tug.

Senator JONES of New Mexico. I was wondering if your board had any record of these barges, and if it did not, if that was the reason why there was no appraisal.

Captain ROBERT. That was it. And I might add that our board was acting under instructions from the Secretary of the Navy, and where we were not given the name of a ship to inspect we naturally did not inspect it.

The CHAIRMAN. Their value would be very small.

Captain ROBERT. Very small, naturally.

Senator JONES of New Mexico. As to the ship *Kronprinz Wilhelm*, there appears to have been no appraised value on that ship.

Captain ROBERT. We were informed by the Secretary of the Navy that the *Kronprinz Wilhelm* and the *Prinz Eitel Friedrich* were armed and were considered warships, and naturally would not come under the provisions of this joint resolution, as they, if captured, would be subject to condemnation without compensation, and the resolution was only in reference to vessels which would be the subject of compensation in case they were used by our Government.

Senator KING. Is there any proposition to reimburse Germany for these war vessels?

Captain ROBERT. I think not, at least I know of none.

Senator JONES of New Mexico. That is what I was trying to get at. I notice down here the *Pollux*—but I believe you have already explained that.

Captain ROBERT. Yes.

The CHAIRMAN. Then I might say, in order to get a general conclusion as to this list which has been before us, that of the three barges and the one tug of relatively small value, your board has no record of them.

Captain ROBERT. No.

The CHAIRMAN. As to the other two vessels, the *Kronprinz Wilhelm* and the *Prinz Eitel Friedrich*, which appear not to have been appraised by your board, you were advised that they were vessels of war and therefore did not come within the joint resolution under which your board was acting.

Captain ROBERT. Yes, sir; that is correct.

The CHAIRMAN. I notice from this table that the United States Shipping Board expended on the *Aroa* the sum of \$5,329.95, and that she was sold for \$3,833.34. So the point I want to emphasize is that the vessels which are not included within the appraisal are not of sufficient consequence to materially affect the acceptance by the committee of this statement as tabulated as a fair value as found by your board.

Captain ROBERT. I understand that that is correct.

The CHAIRMAN. Do you know how many of these ships were chartered to other countries?

Captain ROBERT. I am without information in regard to that. I would suggest that perhaps the United States Shipping Board could give you that information.

The CHAIRMAN. But whether they were chartered and were sunk those governments paid to the United States insurance money.

Captain ROBERT. I am without positive information on that.

The CHAIRMAN. I will say this, that the first ship mentioned on this list, the *Adamsturm*, was chartered to France, and that France carried the insurance of \$1,120,320, and that that was paid to the Government of the United States.

Senator JONES. That particular ship was sunk.

The CHAIRMAN. Yes; and the next one mentioned on the list was chartered to Italy, the *Alemania*, and Italy paid \$673,400 insurance money.

Senator JONES. I think Captain Robert has now explained the situation to us very adequately.

The CHAIRMAN. We will excuse the captain, and wish to thank him.

Senator JONES of New Mexico. Yes; I wish to thank you for coming here.

Captain ROBERT. I am very glad to have been able to give any assistance, if I have.

(Thereupon the witness left the stand.)

The CHAIRMAN. Senator Sutherland, is there anything that you want to file to-day for the record?

Mr. SUTHERLAND. I have two statements here:

1. Statement of patents by the Alien Property Custodian.
2. Claims filed against property held by Alien Property Custodian to credit of Imperial German Government.

The CHAIRMAN. They may be made a part of the record.

(The statements referred to are here made a part of the record, as follows:)

Claims filed against property held by Alien Property Custodian to credit of Imperial German Government

Claims for—	Number of claims	Claims pending	Claims withdrawn	Claims involved, court decree	Total amount all claims	Total paid under court decree
Dollar German treasury notes....	28	10	1	17	\$3,870,375.00	\$2,757,889.39
German marks, filed prior to Mar. 10, 1924.....	5	3	2	.....	226,175.00	.....
Property.....	13	2	11	.....	2,625,600.70	.....
German marks and German mark bonds since Aug. 14, 1926.....	579	579	.....	.....	3,160,413.97	.....
Total.....	625	594	14	17	9,882,564.67	2,757,889.39

¹ And interest.

² \$2,200,000 of United States Veterans Bureau for insurance paid on account of loss of American vessels and lives.

Funds held to the credit of Imperial German Government

Trust	Amount held	Amount paid under court decree
No. 555.....	\$557,889.39	\$557,889.39
No. 9322.....	2,200,000.00	2,200,000.00
Total.....	2,757,889.39	2,757,889.39

Reference is also made to the statement submitted by the Alien Property Custodian showing property held to the credit of "Undisclosed enemy trusts," which may or may not be disclosed later as belonging to the Imperial German Government, which statement appears on pages 472 and 473 of the hearings before the House Ways and Means Committee (No. 4, November 15-24, 1926).

The amendment to the trading with the enemy act of November 4, 1918, provided, in substance, for the seizure of alien enemy-owned patents, trade-marks, and copyrights, which authority had been held by the Attorney General as lacking in the original act.

The amendment of March 4, 1923, provided, in substance, for the return to the former alien enemy owners of all of the patents, trade-marks, and copyrights which had not been licensed, sold, or otherwise disposed of.

Seizure and disposition by Alien Property Custodian of patents, trade-marks, and copyrights

SEIZED

Property	Total number	Sold	Licensed	Sold and licensed	Returned	Otherwise disposed of	Title now held
Patents.....	11,968	5,834	5,415	529	133	77	5,492
Trade-marks.....	1,728	1,701	1	3	11	12	13
Copyrights.....	3,166	3,120	18	0	0	22	40
Total.....	16,892	10,661	5,434	532	144	111	5,545

DISPOSITION

Assignee	Property					Consideration	
	Sold	Licensed	Total	Sale	License		
U. S. Government:							
Patents.....	154	5,850	6,004	\$3,690.00	\$100,000.00	\$103,690.00	
Contracts.....	14		14				
Chemical Foundation:							
Patents.....	15,089	None.	5,089	271,850.00	None.	271,850.00	
Trade-marks.....	870		870				
Copyrights.....	492		492				
Various others:							
Patents.....	96	57	153	1,383,351.00		1,386,949.99	
Trade-marks.....	13		13		3,598.99		
Sold with assets of corporation, 50 per cent or more stock owned by Alien Property Custodian; no value set up for patents, trade-marks, or copyrights:							
Patents.....	1,024		1,024				
Trade-marks.....	795	None.	795				
Copyrights.....	2,504		2,594				
Total.....				1,658,891.00	103,598.99	1,762,480.99	

¹ 128 patents involved in Federal trade licenses.

RE LILLY BUSCH ET AL. v. ALIEN PROPERTY CUSTODIAN

(German bond cases: 12 plaintiffs in the Supreme Court of the District of Columbia and five in the District Court of the United States for the Eastern District of Missouri)

In the above-entitled actions it was admitted by the Alien Property Custodian that there was deposited in the Treasury of the United States \$2,715,571 in cash which belonged to the German Government. Judgment was rendered on a mandate of the Supreme Court of the United States for this amount. The claims, however, involved in these suits were for more than \$2,715,571, but the court only gave judgment for what this office admitted it held.

This judgment has been satisfied in full so far as it affects the Treasurer and the custodian. The plaintiffs, however, have filed a supplementary bill reiterating the fact that interest accrued on this \$2,715,571 while held in the Treasury of the United States, and this suit is still pending on appeal.

If judgment is recovered against the custodian and the Treasurer, this interest will come out of the unallotted interest held in the Treasury.

There are no unsatisfied judgments against this trust.

STATEMENT ON PATENTS BY THE ALIEN PROPERTY CUSTODIAN

History indicates that the moving considerations for the trading with the enemy act and the actions of the executive department of the Government in treating the subject of alien enemy patents primarily grew out of an economic situation existing before the World War and which became acute after the United States entered the war with Germany.

The first legislative expression was the trading with the enemy act of October 6, 1917.

Section 10 (c) of that act provided for the licensing of alien-owned patents to American industry.

Section 10 (f) of that act provided that with respect to licenses granted, if no suit was brought by the owner within one year from the time peace was declared, then the licensee was not required to make any further deposits of license fees and such fees as had been deposited would be returned to him.

Federal trade licenses under trading with enemy act, section 10 (c)

Property	Number of licenses	Number involved	Royalties
Patents.....	71	161	\$584,175.95
Trade-marks.....	3	3	1408,434.60
Copyrights.....	13	18	966.76
Total.....	87	182	993,577.31

¹ \$157,000 Liberty bonds.

Section 10 (f)

Owners	Suits			Royalties involved	Royalties paid out, court decree	Royalties paid out, no suit
	Total	Settled	Pending			
Alien Property Custodian.....	12	.....	12	\$128,044.65	None.	None.
Chemical Foundation (Inc.).....	65	.....	65	486,036.60	None.	None.
Other owners.....	46	3	43	888,595.93	\$345,145.22	\$12,387.09
Total.....	123	3	120			

Received..... \$993,577.31
Paid out..... 357,532.31

Now held..... 636,045.00

¹ \$157,000 Liberty bonds.

The CHAIRMAN. Senator Owen, the committee will be glad to hear you.

**STATEMENT OF HON. ROBERT L. OWEN, INVESTMENT BUILDING,
WASHINGTON, D. C.**

The CHAIRMAN. Senator Owen, I notice in the hearings held by the House of Representatives you made a statement on this question. Have you studied the bill as it passed the House, and if so, I should like to have you make a statement as to your views on it.

Mr. OWEN. I have read the bill quite carefully. When I was in the Senate the war measures were passed and I took an active part in them, including the trading with the enemy act, and before leaving the Senate I took occasion to express an opinion with regard to the principles that were involved in the trading with the enemy act, and the importance of those policies which had been written into that act, and the duty of the United States to respect the principle of the protection and inviolability of private property and to return all alien property in accordance with the original intent of the Congress in taking it over and putting it in the hands of an alien property custodian for preservation and ultimate return. The

opinions then expressed I continue to entertain firmly and believe this bill should pass.

The best domestic policy of the United States from our own standpoint, entirely regardless of the property owner's interests, is to firmly maintain the doctrine of the sacredness of private property. Our record in regard to this has been quite perfect for 150 years, and has had the effect of making the United States more largely than any other country in the world perhaps the haven to which property has come, as a country where its safety was maintained. This policy has greater importance now than ever since other leading nations have, under the treaty of Versailles, violated this principle. Our foreign policy and our foreign interests require that we should protect private property, for the reason that already we have investments abroad amounting probably to one hundred times the amount of the German alien property involved. Our foreign investments now are estimated at about twenty-two thousand millions, while our alien property involved was not probably over \$300,000,000; if we disregarded the rights of such private property and did not firmly maintain the principle of protecting it, such a precedent might come back to plague us in the future, because these investments abroad, which are already very large, were growing rapidly, at the rate of between one and two billions of dollars per annum, and our interests throughout the world and the interests of our citizens make it to our national interest to maintain firmly this just policy.

And all the more so because other belligerent governments, the British Government, the Belgian Government, the French Government, the Italian Government, and others have disregarded the just rights of private property and have in violation of the principles which they themselves had established up to the time of the World War, seized private property of individuals and applied it for the payment of the indebtedness of the defeated countries and even for private purposes.

It is true that the British Government denies that it has confiscated property—and other governments to some extent disclaim having confiscated private property for that purpose, because they each charge Germany with the duty of repaying to the individuals the value of the property taken by force from such private citizens. I can not regard that as a sound position, because the British Government and the other belligerent governments knew perfectly well that the Government of Germany as such had been reduced by them to complete incompetency as related to the possible payments to German nationals whose private property had been sequestered and then confiscated by these governments. All of the assets of the German Government had been taken over by the belligerent governments and fantastic claims made, until finally it came to the point where the Dawes plan was put into effect. The incapacity of Germany to meet the charge of 132 billions of gold marks, and the other charges which were being made against Germany under the Versailles treaty left the German Republic bankrupt. So that the German Government, as a matter of fact, in promising to pay the amounts thus due to the German nationals, whose property had been wrongly seized and appropriated, was only able to pay from 1½ to

4 per cent on such amounts, and it came to the point where the German Republic, of necessity, declared the policy, as a final declaration from the German Government, of incapacity to pay these German nationals.

I put in the record of the hearings of the Ways and Means Committee of the House in November last a statement of the German law, with which I was familiar, and pointed out Germany's undisputed incapacity to pay her own nationals. The effect of the action taken by the belligerent entente governments was a complete, or almost absolutely complete confiscation of the private property of the German nationals. It has affected necessarily the credit values in those belligerent countries and indirectly they are paying a high price for this folly. It has been a declaration to the world that in the event of war alien private property in those countries would not be safe, and therefore it warns those aliens who have investments to make that they must be mindful of this new declaration of policy in England and France, confiscation of alien private property if war ensues. It is the more important to the United States because disregard of private property, and of private life for that matter, during the World War had so disordered society in Europe, and throughout the world, that it has given an immense impulse to communism throughout Europe, and elsewhere, and has developed a Bolshevik movement, which is threatening private property holdings throughout the whole world, and has given rise to the world-wide propaganda of the Third Internationale of Russia, which is now carrying on its devices almost everywhere with mischievous consequences, particularly in the Orient, in China, in India, and to some extent in South America.

We have had occasion recently to have the Secretary of State point out to us the activities of this Third Internationale in Mexico, our immediate neighbor on the south; and for that reason I regard it as a policy of supreme significance that the United States, regardless of the property rights of any of these individuals affected by this bill, American claimants or German claimants, shall faithfully and firmly maintain the doctrine of the sacredness of private property against the doctrine of Bolshevism.

I put a memorandum in the record of the hearings of the Ways and Means Committee of the House giving our own history with regard to private property, pointing out the treaty relations which we had with Great Britain under the Jay treaty, where the United States went so far as to pay the British Government \$3,000,000 on account of private property which has been taken over by the individual States of the Union.

Your attention is especially called to this memorandum in Part 4, House hearings.

The Prussian treaty, which contemplated that private property would be preserved safely in the United States in the event of war, and particularly in event of war has remained our unbroken policy.

We instructed our delegates to the Hague convention, not only to maintain that principal but to insist that private property, even on the seas, should be made safe and be protected in the same way.

The record of the United States in respect to the sacredness of private property has been perfect.

Just preceding our entrance into the World War on April 6, 1917, (which was being considered in January, 1917) where the German owners of deposits in the United States began to withdraw them from the New York and seaboard banks, and in order to stop that mischief which was doing harm to our financial centers and which threatened to reach large proportions, the Secretary of State, representing the President of the United States, gave the most positive assurance to all alien people who had property or deposits in the United States that they need have no fear whatever as to their property, that it would be protected safely. I put that quotation in the hearings of the Ways and Means Committee of the House, and with the consent of the committee it may be advisable to put in my statement here references which I made at that time, so I will not pause to take the time to read them.

The CHAIRMAN. They may be included as a part of your remarks.

Mr. OWEN. If I may be permitted to note them in the hearing I think that will suffice.

The CHAIRMAN. Permission to do so is granted.

Mr. OWEN. Mr. Wilson, our President, made many statements which are of great world-wide interest pledging the United States to protect alien private property in connection with our going into the World War, for example:

EXCERPTS FROM ADDRESSES BY WOODROW WILSON WHILE PRESIDENT OF THE UNITED STATES

[From his second inaugural address (March 5, 1917)]

We desire neither conquest nor advantage. We wish nothing that can be had only at the cost of another people. We have always professed unselfish purpose and we covet the opportunity to prove that our professions are sincere.

[From his address to Congress advising that Germany's course be declared war against the United States, delivered in joint session, April 2, 1917]

We desire no conquest, no dominion. We seek no indemnities for ourselves, no material compensation for the sacrifices we shall freely make.

[From his address at dedication of the Red Cross Building, Washington, May 12, 1917]

We have gone in with no special grievance of our own, because we have always said that we were the friends and servants of mankind. We look for no profit. We look for no advantage. We will accept no advantage out of this war.

[From his message to Russia, delivered to the Provisional Government on May 26, 1917; made public at Washington on June 9]

The position of America in this war is so clearly avowed that no man can be excused for mistaking it. She seeks no material profit or aggrandizement of any kind. She is fighting for no advantage or selfish object of her own but for the liberation of peoples everywhere from the aggressions of autocratic force.

[From his reply to the Pope's peace proposal]

The purposes of the United States in this war are known to the whole world—to every people to whom the truth has been permitted to come. They do not need to be stated again. We seek no material advantage of any kind.

President Wilson on April 6, 1917, pledged protection of all enemy aliens and that they would—

"be accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States."

The President said on April 2, 1917:

"We have no quarrel with the German people. We have no feeling toward them but one of sympathy and friendship * * *. We are but one of the champions of the rights of mankind. We shall be satisfied when these rights have been made as secure as the faith and freedom of the United States can make them."

Is it consistent with this declaration to refuse to return this property to its owners?

President Wilson, in his reply to Pope Benedict, said, referring to the Germans in Europe at actual war with us, that the American people—"desire no reprisal upon the German people, who have themselves suffered all things in this war which they did not choose."

In his message to Congress, December 4, 1917, he said:

"No nation or people shall be robbed or punished because the irresponsible rulers of a single country have themselves done * * * wrong."

He said on April 6, 1918:

"We ourselves propose no injustice, no aggressions. We are ready whenever the final reckoning is made to be just to the German people."

John Bassett Moore in his book International Law and Some Current Illusions, page 24, said:

"In the original statute the function of the Alien Property Custodian was defined as that of a trustee. Subsequently, however, there came a special revelation, marvelously brilliant, but perhaps not divinely inspired, of the staggering discovery that the foreign traders and manufacturers whose property had been taken over had made their investments in the United States not from ordinary motives of profit but in pursuance of a hostile design, so stealthily pursued that it had never before been detected or even suspected, but so deadly in its effects that the American traders and manufacturers were eventually to be engulfed in their own homes, all the alien plotters left in grinning possession of the ground. Under the spell engendered by this agitating apparition and its patriotic call to a retributive but profitable war on the malefactor's property substantial departures were made from the principle of trusteeship."

It was the animosities and propaganda of war which led to these departures from the high principles of justice which the United States has uniformly maintained and which makes Americans so proud of their noble Government and their glorious flag that always stands for justice and liberty and mercy.

Perhaps no one has more strongly expressed disapproval of the confiscation of private alien property than the Hon. Charles Evans Hughes, Secretary of State, in his address at Philadelphia, November 23, 1923, in which he said:

"A confiscatory policy strikes not only at the interest of particular individuals but at the foundations of international intercourse, for it is only on the basis of the security of property, validly possessed under the laws existing at the time of its acquisition, that the conduct of activities in helpful cooperation is possible. * * * Rights acquired under its laws by citizens of another State [a State] is under an international obligation appropriately to recognize. It is the policy of the United States to support these fundamental principles."

OUR ECONOMIC INTEREST FORBIDS CONFISCATION

The trading with the enemy act was presented to the United States Senate for consideration by President Wilson, and there appeared before our committee the Secretary of State, Mr. Lansing, the Secretary of Commerce, Mr. Redfield, and other authorities, who at considerable length explained the intent of that bill; that the bill was intended to prevent property belonging to aliens in the United States from being employed against the interests of the United States in times of war; and that at the same time it was necessary to pass a trading with the enemy act in order, among other things, to provide an alien property custodian, who should safely keep this property, protect it from the natural aggressions which would have taken place when the war spirit began to run high after the declaration of war, and to keep it from being sub-

jected to sabotage and injury in various ways. The bill was passed with that end in view.

Afterwards it was consistently interpreted by the Congress of the United States in the Winslow Act, and all property belonging to alien property owners of less than \$10,000, or where the amount was more than \$10,000 the sum of \$10,000 was paid. So that Congress disposed of all small amounts owned by alien property owners by returning their property to them or by making them a payment up to \$10,000.

All property belonging to German or Austrian citizens who were transferred by boundary changes to France, Belgium, Italy, Yugoslavia, Czechoslovakia, Poland, and Denmark was fully returned by the United States.

But the Winslow bill provided the remainder above \$10,000 due such owners should still continue in the hands of the Alien Property Custodian as a measure of quasi-security for American claimants. Americans had considerable claims against Germany, which, upon a final adjustment by the Mixed Claims Commission, United States and Germany, will amount, together with what is due to the United States Government, to a sum estimate approximately at \$250,000,000.

There was a measure passed in 1921, called the Knox-Porter resolution, looking to the ending of the war, that is, a formal declaration of the ending of the war between the United States and Germany; and that measure very naturally, and I think justly, provided that the United States might retain this German alien property until the German Government had "made suitable provision for the satisfaction" of American claims, or until the Congress otherwise ordered.

The term "suitable provision" is not a closely defined expression. The word "suitable" means appropriate, fit, proper, or reasonable under all the circumstances of the case, that which would be fitting under the circumstances.

The term "satisfaction" which is used is not itself a defined term in our legal language. We often use the term "satisfaction" when it does not mean 100 per cent payment, but means a settlement to the extent of the ability of the debtor. The debtor goes into a court of bankruptcy and submits all of his means to pay, and when he has done that, and turned over to the legal authorities all of his assets, he is permitted to give satisfaction to his creditors, even if it is not a 5 per cent payment which results from the liquidation of the property that he has. So the term "suitable provision for the satisfaction" of these claims shows just what it really means and was intended to mean, and it was explained by Senator Knox who drew the resolution and presented it on the floor of the Senate. I put into the record of the Ways and Means Committee of the House of Representatives the language used by Senator Knox, and with the permission of the committee I will insert it as a part of my remarks.

The CHAIRMAN. That may be done.

On June 30, 1921, Senator Knox, in discussing the conference report on the peace resolution, made the following statement (Congressional Record, Senate, p. 3249):

"The whole theory is this: Speaking for myself personally, I hope the day is not far away when we shall come back to the traditions of the American

people that the right upon land of private property belonging to an alien enemy is a sacred right; that such property may be taken into custody only for the purpose of conservation; and that at the end of the war there shall be a strict accounting to the owners of that property by the Government of the United States, which may take it temporarily into its possession. That is one of the principles for which this country has contended for a hundred years. While, as Chief Justice Marshall said, the Congress may have the power to provide that the private property of alien enemies may be taken during the war, it can only do so by putting upon itself a moral terpitude of which it ought to be ashamed. The purpose of the joint resolution is simply to hold in *statu quo* the things that have been done by the Alien Property Custodian. The joint resolution simply states that until a suitable adjustment has been made of the claims of American citizens against Germany for the property that has been seized by Germany, the property in the hands of the Alien Property Custodian shall be held until Congress shall dispose of it. I do not know whether I have quite answered the question that has been propounded by the Senator from North Dakota, but what I have stated is the whole theory of the joint resolution, not that we are in any way committing ourselves to the proposition that we are going to retain alien enemy property, but that we are going to retain it only until suitable provision has been made for the satisfaction of American claims against Germany and against Austria."

Mr. OWEN. The Knox resolution was afterwards written into the Berlin treaty, and the Berlin treaty in turn made reference by which the United States was to be entitled to the rights of other belligerent Governments under the terms of the treaty of Versailles. So that article 297 of the Versailles treaty must be considered in connection with the Knox-Porter resolution, the Berlin treaty, and the settlement of this question.

Article 297 expressly declares that alien property liquidation is left to the laws of the nation concerned. It does not confiscate but leaves a nation free to confiscate or not confiscate, as its own policy decrees.

The meaning of the language of the treaty of Berlin, I think, must be in the light of a reasonable interpretation of the Knox-Porter resolution and of the terms of the treaty of Versailles referred to and the Constitution of the German Republic, which forbids confiscation.

The authorities of the Government of Germany in considering that question, I think, may not justly be held to have understood that they were expected, in agreeing to make suitable provision for the satisfaction of claims, to pay 100 per cent of the claims unless they had the means with which to pay. They did not consent to do the impossible, nor to an unauthorized confiscation of private property. The fact of the maximum which the German Government by any possibility could raise without collapse of the Government itself, was determined by the Dawes plan to be \$600,000,000 per annum, with the possibility of having it increased in case of their commercial recovery to a point where their taxes would make it possible for them to pay more. But the German Government had also no voice as to the distribution of the \$600,000,000 proposed under the Dawes plan. The question of distribution of that amount was fixed without the presence of the German authorities, at Paris, by the belligerent powers. The United States participated in that division, because at the time the division was made in Paris, in January, 1925, the United States had failed to collect the \$250,000,000 approximately which due to the Government of the United States on account of army occupation costs. They also had not secured any adequate means of settlement of individual American claims against Germany, which repre-

sented a total approximately of \$180,000,000 or \$190,000,000 under the findings of the Mixed Claims Commissions.

Therefore the Government of the United States, through the ambassador at London, then Mr. Kellogg, now Secretary of State, in conjunction with Mr. Herrick who was then United States ambassador at Paris, and Mr. Logan, who was the representative of the United States sitting in without official authority or official capacity except as an observer at the Reparations Commission, represented the interests of the United States.

And there was considerable reluctance on the part of Great Britain to agree that the United States should have any participation in this \$600,000,000 per annum. The British Government was represented by Austen Chamberlain, who was secretary of state for foreign affairs—

The CHAIRMAN. It was not only the British Government.

Mr. OWEN. Yes; but I mentioned him because he carried on the actual correspondence with the American authorities. He contended very strongly and urgently that the United States had no right to participate in this fund, because the United States had a sufficient amount of German alien private-owned property in the United States with which to pay these claims, and that since the United States had that property available the United States ought to use it for that purpose, just as the British had done and just as the French had done. To that contention Mr. Kellogg, with great propriety and great force, stated that the treaty of Versailles left the United States at complete liberty to do as it pleased with regard to that property, and that it had a perfect right under the treaty of Versailles to return every dollar of it if it saw fit, that the United States was not precluded from doing as it pleased with that alien property, and that it was not competent for the British Government, or the Entente Allies, or the belligerents, to make any demands on the United States with regard to its policy relative to private property in the United States which had been sequestered under the laws of the United States and which by the terms of the trading with the enemy act was left exclusively in the hands of the Congress of the United States to settle as it saw fit.

That view finally prevailed, but with the exception that Mr. Chamberlain urged on behalf of the Entente Allies that if the United States did take over and confiscate any German alien property, it was accountable to the Entente pool for so much of that property as it took. And that has a very important relation to this whole matter, because just to the extent that the United States should abandon its policy of protecting private property, and just to the extent that the United States should confiscate, either directly or indirectly this property, they must make remittance of just that much out of the amounts to be paid under the Dawes plan.

It is a very important thing I think as a matter of principle and policy for this committee to be well advised with regard to that, and you will find in the record, Senate Document 173, at pages 40, 52, 59, and 70, and other pages, numerous declarations by Secretary Kellogg, declaring point blank that the treaty of Versailles does not provide that the United States is to confiscate or is not to confiscate, that it may do as it pleases with regard to that property, but if it does confiscate then Secretary Kellogg agreed that the

United States was responsible to the belligerent powers and must make an accounting for it. Senate Document 173 is a very important document in this matter, not to be by any means overlooked.

You take the matter of ships, for instance, and while the Congress may put any valuation on them it pleases, if you please to put a valuation that is less than the real value of the ships to those owners, you are accountable under this record for that amount. I think, therefore—

Senator JONES of New Mexico (interposing). Might I inquire: Did the Reparation Commission or any other authority assume to value property in France or in England which those Governments sequestered and applied to the payment of their claims? Did not they acquiesce in and accept the returns from that property as ascertained by those respective Governments, and does not the treaty of Versailles provide that this property may be disposed of under the laws of the United States?

Mr. OWEN. It does; yes.

Senator JONES of New Mexico. Then, what authority is there in the treaty for going back of the ascertainment of values by the respective Governments?

Mr. OWEN. I think Mr. Chamberlain's contention is not justified on any ground, but I am reminding you what his contention was. And the Secretary of State conceded that if the United States did confiscate any portion of this property the United States was responsible. Shall I read you the language of the Secretary of State on that?

Senator JONES of New Mexico. I am quite familiar with it.

Mr. OWEN. The Secretary refers to the ships as well.

On August 6, 1925, Baron Maltzan, the German ambassador, appeared to have thought that the United States was under a large obligation to return the German alien property (p. 36) under the Berlin treaty, because the German Republic had made suitable provisions; but the Secretary of State, May 4, 1926 (p. 37), points out that the United States has the legal right under the Versailles treaty to take it and use it as it sees fit (p. 39), but carefully points out that whether it shall be expropriated is by the trading with the enemy act "reserved to the Congress." The Secretary of State points out that the State Department had done nothing to preclude Congress from a free exercise of its reserved powers. He says (p. 39):

The question of policy is, of course, separate and distinct from the question of law and as appears above, has been reserved for determination by the Congress * * * which body is now considering that question.

Of course, the Secretary of State did not refer, in addressing a foreign ambassador, to any question affecting our domestic policies such as our own interpretation of the Executive and legislative pledges to the alien property owners or our domestic and foreign interests and allied questions which the Congress would consider.

The Secretary of State, instructing the United States ambassador to Great Britain, said (p. 43):

5. The treaty of Versailles clearly left each allied or associated Government the option of retaining or returning such property.

The allied Governments have exercised their option of retaining it.

The Government of the United States must remain equally free to retain or release the property as it may ultimately see fit in the exercise of the option.

If any property is finally appropriated to the payment of American claims, the value thereof will, of course, be credited against these claims against Germany.

6. The statement in paragraph 5 applies not only to property taken over by the Alien Property Custodian but to vessels, title to which was taken under the joint resolution of Congress, May 12, 1917. * * *

This doctrine is fully repeated (p. 59) by Secretary Kellogg to Secretary Chamberlain, and he says:

My Government, of course, intends, with respect to such property or proceeds as may be finally retained, to give appropriate credit upon its claims.

In other words, Chamberlain has a right to understand that any German alien property retained will come to the entente Allies by diminishing the claim of the United States in its participation in the amounts payable now to the United States under the Dawes plan and will be taken from the 45,000,000 gold marks annually now due to the United States and turned over to the entente pool.

On January 4, 1925, Secretary Kellogg again repeats this whole doctrine in his letter to Secretary of State for Foreign Affairs Chamberlain. (See p. 70, *ibid.*)

The United States really has not been treated fairly at all in the matter of its claims, because the Allies confessed to receiving \$4,000,000,000 of property from the German Government, and they did not pay the \$250,000,000 of our army occupation costs, which they ought to have paid. But they retained it, and afterwards justified it on the pretense that they did not have any reason to believe that the United States was going to claim any army occupation costs—for which pretense there is no justification at all. I think the pleading of Austen Chamberlain, which appears in that record, is highly discreditable to the British Government.

The argument appeared somewhere in the hearings before the Ways and Means Committee of the House of Representatives, and I do not remember now where or by whom, that the German Government had the right to know that they had agreed to a confiscation of German alien property in the United States. The German Government did, of course, agree to make no protest of any kind whatsoever against any adjustment the United States might see fit to make. As far as the German Government is concerned it is absolutely precluded from opening its mouth on this question. By the treaty of Berlin they were silenced; and they are silent; but I thought it was proper to call to the attention of the Ways and Means Committee of the House, in expressing an opinion about this matter at all, that the German Government itself had no authority whatever under the constitution of the German Republic, the Weimar constitution, to confiscate property of any German citizen or subject. The Weimar constitution precludes that, and that constitution being in existence, and there being nothing in the Berlin treaty which justifies the idea of the German constitution being disregarded by the German authorities, I think it can not be held with reason that the German authorities intended to authorize the United States to confiscate any German property. With the consent of the committee I will put into the record quotations from the Weimar constitution which cover this point. (See House hearings, vol. 4, p. 423.)

The CHAIRMAN. That may be done.

Senator SHORTRIDGE. I should like to ask a question right there. I am so deeply interested in what you are saying, which is so clear and illuminating, that I want to ask: Under the Berlin treaty who was to determine whether suitable provision for the satisfaction of our claim was made?

Mr. OWEN. It was not expressly provided in the terms of the treaty as to who should pass upon that matter. Of course, it was to be determined by the parties to it, and the reasons which would lie underneath the language used and the circumstances under which made. I was only pointing out that the German Government could not be understood to have intended to authorize the United States Government to confiscate German alien private-owned property; that the meaning of the language was not such as to necessarily put that interpretation upon the treaty.

Senator JONES of New Mexico. May I inquire: What was the purpose of inserting in the Berlin treaty the provisions of the Versailles treaty that we might use this property of German nationals for the satisfaction of claims of American nationals, and that the German Government would recompense German nationals for such property?

Mr. OWEN. The Entente Allies dictated these harsh terms for their own supposed benefit, not for ours. We were not considered in this sad affair. The German Government was, as we all know, a defeated government, without power to object to anything that was demanded of it within the bounds of reason; and the German Government agreed to do whatever the victorious nations demanded. They signed the treaty of Versailles at the point of the bayonet, as everybody knows. The whole record shows that after the most pathetic plea on the part of the Germans that the treaty contained unheard of and impossible provisions, they finally yielded because Mr. Clemenceau notified the German representatives that the armies of the Entente powers would advance through Germany unless that was done. So they yielded and signed it. The United States was not responsible for this great wrong.

The great anxiety on the part of the German Government to reestablish relations with the United States justified them in signing the treaty of Berlin, but neither that treaty nor the treaty of Versailles, in my opinion, in any way involved the idea that the German Government intended to authorize confiscation of its property. They only agreed that if it was confiscated they would undertake to pay their nationals. They did not, at that time, absolutely know that they were bankrupt. They did not know that until several years afterwards, because the financial cataclysm that occurred in Germany came in 1923.

I was going into Germany in August, 1923, from Switzerland. I bought German marks at the rate of a 500,000 mark for a dollar the day before I entered Germany. I went to Strassburg the next day and bought German marks at the rate of 1,000,000 for a dollar. In Berlin a week or two later I bought German marks at the rate of 6,000,000 to the dollar. I went into Denmark and returned to Germany at Coblenz a few weeks afterwards, and I bought before I left Germany 120,000,000 marks for a dollar.

In the summer of 1923 German finances went through a complete collapse because they were charged with responsibility under the Versailles treaty and were under the urgent necessity of demobilizing their armies and getting back to civil life, and they were subject to such charges that they could not possibly meet them. The consequence was that they used the next best thing, which was the running of the printing presses in printing marks—so that the whole financial structure of Germany went through a complete collapse, and every person who had any savings in banks in terms of marks, lost those savings. Those who had bank deposits of any kind lost them. Those who had Government bonds or municipal bonds or industrial bonds lost the value of their property. The middle classes, the saving classes of Germany, were reduced to bankruptcy. That will account for the reason why Germany found itself absolutely unable to meet payments to its own nationals on property taken away from them by Great Britain, France, Italy, Belgium, and so on.

The important point which I think should be observed is that the treaty of Versailles, as the Senator from New Mexico very properly points out, states that in case of liquidation the liquidation must take place in accordance with the laws of the allied or associated powers concerned. That means that at the last this question goes to the Congress of the United States, where it was left under the trading with the enemy act, and has to be interpreted in line with our Constitution, which under section 5 precludes in times of peace confiscation of private property.

Senator SHORTRIDGE. Of course you would hold that that applies to alien-owned property as well as citizen-owned private property.

Mr. OWEN. Oh, yes. And since the German Government did not intend to authorize it that would preclude the suggestion which I was referring to as having been made in the hearing before the House Ways and Means Committee and to which I made that reply. But the idea, the suggestion that the German Government could by treaty authorize the United States Government to disregard its own Constitution with regard to private property, is incredible, and I think no one would seriously maintain that the German Government could give any right to disregard our own constitutional provisions, and of course the German Government has nothing to do with our domestic policy or our general policy with regard to the preservation of the rights of private property.

With regard to American claimants, I have felt a sympathy for them because while they claim that they have security in this property, I am thoroughly convinced that they have no claim against the alien property as such. The United States Government has got the right as a matter of practical policy to say: We will hold this until the German Government does what it can, but after the German Government has put all its assets under the control of the entente allies, and has done everything it could to meet the obligations, unless that be regarded as "suitable provision for satisfaction," that term in my judgment would be a mockery.

I sympathize with the American claimants because when a citizen of the United States is the victim of a declaration of war, or of a

policy of war declared in the interest of all the people. I think it unfair that the loss which ensues by virtue of the action of his own Government upon that citizen should be visited disproportionately upon him; it should fall proportionately upon all the people of the United States and not exclusively upon the individual. He not only pays his own taxes, which entitles him to protection, but he pays at that time the extraordinary taxes of war. More than that, he submits his life itself in defense of his Government, and his Government owes the reciprocal obligation to him to protect him and to protect his wife and children against the destruction of his private property by an act of war declared by his own Government, or by the policies of war adopted in the interest of all the people. Upon that I have no doubt. I believe in protecting citizens of the United States, and I think the reciprocal obligation which demands loyalty from the citizen is based upon sound reason, and there is no policy of greater value to a country than to bind the loyalty of the citizen in the strongest possible way to the Government, and when that Government disregards its duty to the citizen that Government need not wonder if that citizen loses his loyalty to the Government.

Therefore I sympathize with the American claimants, and I sympathize all the more with them because they were entitled to representation by the Government of the United States, and the duty of representation is a serious duty not to be lightly considered. It is a duty not only to represent the citizen in that respect, but it is the duty of the Government to represent that citizen competently and not incompetently, and the United States, because of the turmoil following the war, was unable, and because of other policies, found it inexpedient to take part in this Reparations Commission, they refused to be a member of the Reparations Commission, and I think justly enough, but when they did refuse, and when they for reasons of policy did not obtain from Germany when it had the property to pay with, the means to liquidate the claims of American claimants, then I think the Government of the United States has assumed the responsibility of meeting those claims to the last dollar, not in part but to pay the whole of them if necessary. I think it will ultimately work out all right, but if there is a loss by the default of Germany the loss properly belongs to the United States, I think that is a question of policy of the most vital significance to the future welfare of the American people. The question of American policy is one to which I have given deep and long study, it is the matter that has more intimately engaged my attention and my interest than any other question in the world. I have given almost my whole life to public service, I feel very deeply on the situation before this committee. This committee is charged with a grave responsibility, and I am sure it will work it out satisfactorily and adequately. I am very much obliged to the committee for this opportunity of expressing that opinion.

The CHAIRMAN. We thank you, Senator Owen.

(And the witness left the stand.)

(The following is the part of Mr. Owen's statement that is here included in the record, as follows:)

EXHIBIT A

PARIS AGREEMENT REGARDING THE DISTRIBUTION OF THE DAWES ANNUITIES,
OFFICIAL COMMENT

Extract from letter of Secretary of State to the President, February 3, 1925, transmitting information in response to Senate resolution 301.

In its report, the Dawes committee made recommendations with respect to annual payments by Germany stating that these payments were to be of an inclusive character. The committee said:

Before passing from this part of our report we desire to make it quite clear that the sums denoted above in our examination of the successive years, comprise all amounts for which Germany may be liable to the allied and associated powers for the costs arising out of the war, including reparation, restitution, all costs of all armies of occupation, etc.

It is evident that it was the intention of the committee to provide a comprehensive plan of economic reconstruction and that the annual payments to be made by Germany were to be applicable to all her obligations to the "Allied and associated powers," this descriptive term manifestly including the United States.

The United States has two classes of claims against Germany: (1) for the costs of its army of occupation, and (2) for the claims upon which it is entitled to recovery under the treaty between the United States and Germany of August 25, 1921. An executive agreement had been made under date of May 25, 1923, for the gradual liquidation of the claim for the costs of the American army of occupation, but this agreement had not yet become effective. The amount of the claim for unpaid costs of the army of occupation was approximately \$250,000,000. The other claims which the United States is seeking to recover are the subject of an executive agreement with the German Government under date of August 10, 1922, providing for a Mixed Commission to determine the amount to be paid by Germany. This commission consists of an American commissioner, a Germany commissioner, and an umpire who by agreement of the Governments of the United States and Germany is an American citizen. Under the agreement establishing the Mixed Commission it is provided that the following categories of claims shall be passed upon, to-wit:

(1) Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights and interests, including any company or association in which they are interested, within German territory as it existed on August 1, 1914;

(2) 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, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

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

This Mixed Commission has been sitting in Washington, and the claims of the Government of the United States and its nationals against Germany are in course of adjudication. While it is not possible at this time to fix precisely the total amount of the awards, it is estimated that they will not exceed \$350,000,000.

On July 16, 1924, a conference of representatives of the allied powers was convened in London to consider the recommendations of the Dawes committee. In view of the inclusive nature of the payments contemplated by the Dawes plan, the American ambassador at London was directed to attend the conference in order that the interests of the United States might be appropriately safeguarded. While the London conference resulted in agreements between the allied powers and between those powers and Germany for the putting into effect of the Dawes plan, that conference did not attempt to distribute the payments which it was expected would be received by Germany under the plan. It was arranged that a meeting of finance ministers of the allied powers should be convened for the purpose of allocating these payments. That meeting was held in Paris on January 7, 1925. As it was important that the payments expected under the Dawes plan should not be

distributed without appropriate recognition of the claims of the United States and 1st participation in these payments, the American ambassador at Paris, the American ambassador at London, and Mr. James A. Logan, jr., who has been acting as an observer in relation to the transactions of the Reparation Commission, were instructed to attend and to represent this Government at the Paris meeting. They did so, and this meeting resulted in an agreement between the representatives of the respective powers as to the allocation of the payments expected to be made by Germany under the Dawes plan.

With respect to the purpose and scope of this meeting and of the agreement there reached, I made on January 19 the following public statement:

(1) The conference of finance ministers held at Paris was for the purpose of reaching an agreement as to the allocation of payments expected through the operation of the Dawes plan. In view of the inclusive character of these payments, it was necessary for the United States to take part in the conference in order to protect its interests.

(2) The conference at Paris was not a body, agency, or commission provided for either by our treaty with Germany or by the treaty of Versailles. In taking part in this conference there was no violation of the reservation attached by the Senate to the treaty of Berlin.

(3) The agreement reached at Paris was simply for the allocation of the payments made under the Dawes plan. It does not provide for sanctions or deal with any questions that might arise if the contemplated payments should not be made. With respect to any such contingency, the agreement at Paris puts the United States under no obligation legally or morally, and the United States will be as free as it ever was to take any course of action it may think advisable.

(4) The agreement of Paris neither surrenders nor modifies any treaty right of the United States.

With respect to payments to the United States, the agreement provides as follows: (Here follows article 3 of the agreement, which is printed in full in the supplement to this journal, pp. 66-68.)

It will be observed that while provision is thus made for the participation of the United States in the payments to be made by Germany under the Dawes plan, there is no agreement to limit the amount of the claims of the United States, which, as I have said, can only be estimated at the present time. As I said in the statement above quoted, the agreement makes no provisions for sanctions and does not commit the United States in any way to any action in case the contemplated payments are not made. Moreover, the agreement itself provides as follows:

"The provisions of the present arrangement concluded between the powers interested in reparations do not prejudice any rights or obligations of Germany under the treaties, conventions, and arrangements at present in force."

In conclusion, it may be said that this agreement was negotiated under the long-recognized authority of the President to arrange for the payment of claims in favor of the United States and its nationals. The exercise of this authority has many illustrations, one of which is the agreement of 1901 for the so-called Boxer indemnity.

AGREEMENT REGARDING THE DISTRIBUTION OF THE DAWES ANNUITIES (JANUARY, 14, 1925)

FINAL PROTOCOL

The representatives of the Governments of Belgium, France, Great Britain, the United States of America, Italy, Japan, Brazil, Greece, Poland, Portugal, Roumania, Serb-Croat-Slovene State, Czechoslovakia, assembled at Paris from the 7th to the 14th January 1925 with a view to settling as between their respective Governments questions which arise out of the distribution of the receipts already entered, or to be entered, in the accounts of the Reparation Commission, in particular after the 1st January 1923 to 1st September 1924, and also in the first years of the application of the Dawes Plan which formed the subject of the Agreements concluded in London on 31st August 1924,

Have agreed on the provisions contained in the Agreement of to-day's date of which a copy is attached to the present Protocol.

Done at Paris, 14th January 1925.

CLEMENTEL.
G. THIEUNIS.
WINSTON S. CHURCHILL.
MYRON T. HERRICK.
FRANK B. KELLOGG.
JAMES A. LOGAN JR.
ALBERTO DE' STEFANI.
K. ISHII.
L. M. DE SOUZA DANTAS.

EM. J. TSOUDEROS.
J. MROZOWSKI.
J. KARSNICKI.
ANTONIO DA FONSECA.
VINTILA BRATIANO.
N. TITULESCU.
STOYADINOVITCH.
STEFAN OSUSKY.

AGREEMENT

The Governments of Belgium, France, Great Britain, Italy, Japan, the United States of America, Brazil, Greece, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, and Czechoslovakia, respectively represented by the undersigned, have agreed as follows:

SUMMARY

CHAPTER I.—Allocation of Dawes Annuities.

- ART. 1. Costs of Commissions.
- ART. 2. Costs of Armies of Occupation 1924-1925.
- ART. 3. Share of the United States of America in the Dawes Annuities.
- ART. 4. Belgian War Debt.
- ART. 5. Restitutions.
- ART. 6. Belgian Priority.
- ART. 7. Greek and Roumanian share of reparations.
- ART. 8. Miscellaneous Claims.
- ART. 9. Compensation due to the European Commission of the Danube.
- ART. 10. Clearing Office Balances.

CHAPTER II.—Settlement of Past Accounts.

- ART. 11. Distribution of Accounts: Provisions as to Arbitration.
- ART. 12. Ruhr Accounts.

CHAPTER III.—Special Questions Arising out of Previous Agreements.

- ART. 13. Extension beyond January 1st, 1923 of the provisions of Article 2 of the Agreement of the 11th March 1922: Appropriation of Deliveries in Kind to the Costs of the Armies of Occupation.
- ART. 14. Extension beyond January 1st, 1923 of the provisions of Article 6 of the Agreement of 11th March 1922: Retention by each Power of the Deliveries in Kind received by it.
- ART. 15. Costs of Armies of Occupation from 1st May 1922 to 31st August 1924.
- ART. 16. Debits for vessels allotted or transferred to Belgium under Article 6 (4) of the Spa Protocol.
- ART. 17. Debits for Shantung Mines and Railways.

CHAPTER IV.—Interest and Arrears.

- ART. 18. Interest Account.
- ART. 19. Account of Excesses and Arrears as at 1st September 1924.
- ART. 20. Recovery of Arrears.
- ART. 21. Costs of Armies of Occupation to 1st May 1921.

CHAPTER V.—Miscellaneous Questions.

- ART. 22. Repayment by Czechoslovakia in respect of certain Deliveries in Kind.
- ART. 23. Bulgarian Payments.
- ART. 24. Properties ceded to the Free City of Danzig.
- ART. 25. Recommendations with regard to the distribution of the payments throughout the year.
- ART. 26. Interpretation and Arbitration.
- ART. 27. Reservation as to the rights and obligations of Germany.

CHAPTER I.—ALLOCATION OF THE DAWES ANNUITIES

ARTICLE I.—*Costs of the Commission*

A) The maximum normal charge on the Dawes Annuities of the Reparation Commission, including the organisations set up under the Dawes Plan, shall be:

For the year from 1st September 1924. 9½ million gold marks.

For the later years. 7½ million gold marks.

(to be taken partly in foreign currencies or in German currency as required).

Of these sums not more than 3,700,000 gold marks a year shall be attributable to the organisations set up under the Dawes Plan. If necessary this sum may be increased in order to meet the costs of the arbitral bodies provided for by the Dawes Plan and the London Protocol.

B) The maximum charge for the Interallied Rhineland High Commission (including deliveries under Articles 8-12 of the Rhineland Agreement) shall not exceed 10 million gold marks (to be taken in foreign currencies or in German currency as required) for the year from 1st September 1924, this sum being allocated between the French, British and Belgian High Commissariats in the proportion of 62: 16: 22, after providing for the other expenses of the Commission. The amount for any later year will be settled at a later date.

C) The charge of the Military Commission of Control shall not exceed a maximum of 8 million gold marks (to be taken in German currency) in the year from 1st September 1924. The amount of any later year will be settled at a later date. This figure does not include the Commission's expenses in national currencies, which shall continue to be paid by the Governments concerned, the amounts so paid being credited to their respective accounts by the Reparation Commission.

ARTICLE 2.—*Costs of Armies of Occupation 1924/1925*

A) The sums to be allowed as a prior charge on payments by Germany during the year 1st September 1924 to 31st August 1925 in respect of the costs of the Armies of Occupation of Belgium, Great Britain and France, shall be fixed at the following amounts:

Belgian Army	25,000,000 gold marks.
British Army	25,000,000 gold marks.
French Army	110,000,000 gold marks.

B) Belgium, Great Britain and France will meet their additional Army costs during the period mentioned out of their respective shares in German reparation payments, but shall not be debited on reparation account therewith, that is to say, their respective reparation arrears will be increased by corresponding sums.

C) The additional Army costs shall be calculated as follows. Each Power will be entitled to receive:

1. The sums payable under the Finance Ministers' Agreement of 11th March 1922, calculated in the case of Great Britain on the basis of the French capitulation rate with a special allowance of 2 gold marks a man, converted into sterling on the basis of the mean rates of exchange of the respective currencies during the month of December 1921. The value of German marks supplied to the Armies of Occupation and the value of any requisitions under Article 6 of the Rhineland Agreement shall, as heretofore, be included in these sums, and

2. The value of the requisitions and services under Articles 8-12 of the Rhineland Agreement, which are credited to Germany in the accounts of the Agent General for Reparations.

For each Power the additional Army costs shall be the difference between the total sum so calculated and the amount of the prior charge set out in paragraph (A) above.

D) It is agreed that the Powers concerned in the occupation shall not charge for effectives in excess of the strength authorised for each respectively by Article 1 (2) and (3) of the Agreement of 11th March 1922.

E) The provisions of this Article for the year to 31st August 1925 are accepted without prejudice to any question of principle, and the Allied Governments and the Government of the United States of America will discuss, before the 1st September 1925, the arrangement for Army Costs in the future.

ARTICLE 3.—*Share of the United States of America in the Dawes annuities*

A) Out of the amount received from Germany on account of the Dawes annuities, there shall be paid to the United States of America the following sums in reimbursement of the costs of the United States Army of Occupation and for the purpose of satisfying the awards of the Mixed Claims Commission established in pursuance of the Agreement between the United States and Germany of August 10th, 1922.

1. Fifty-five million gold marks per annum beginning September 1st, 1926, and continuing until the principal sums outstanding on account of the costs of the United States Army of Occupation, as already reported to the Reparation Commission, shall be extinguished. These annual payments constitute a first charge on cash made available for transfer by the Transfer Committee out of the Dawes Annuities, after the provision of the sums necessary for the service of the 800 million gold mark German external loan, 1924, and for the costs of the Reparation Commission, the organisations established pursuant to the Dawes Plan, the Interallied Rhineland High Commission, the Military Control Commissions, and the payment to the Danube Commission provided for in Article 9 below, and for any other prior charges which may hereafter with the assent of the United States of America be admitted. If in any year the total sum of fifty-five million gold marks be not transferred to the United States of America the arrears shall be carried forward to the next succeeding annual instalment payable to the United States of America, which shall be pro tanto increased. Arrears shall be cumulative and shall bear simple interest at 4½% from the end of the year in which the said arrears accumulated until they are satisfied.

2. Two and one quarter per cent (2¼%) of all receipts from Germany on account of the Dawes Annuities available for distribution as reparations, provided that the annuity resulting from this percentage shall not in any year exceed the sum of forty-five million gold marks.

B) Subject to the provisions of Paragraph A above, the United States of America agree:

1. To waive any claim under the Army Cost Agreement of May 25th 1923, on cash receipts obtained since 1st January 1923 beyond the sum of \$14,725,154.40 now deposited by Belgium to the account of the Treasury of the United States in a blocked account in the Federal Reserve Bank of New-York, which sum shall for ever be released to the United States Treasury.

2. That the Agreement of May 25th 1923 does not apply to payments on account of reparations by any ex-enemy Powers other than Germany.

3. That the Agreement of May 25th 1923, is deemed to be superseded by the present Agreement.

C) The provisions of this Agreement relating to the admission against the Dawes Annuities of charges other than reparations, and the allotments provided for such charges shall not be modified by the Allied Governments, so as to reduce the sums to be distributed as reparations save in agreement with the United States of America.

D) The United States of America is recognised as having an interest, proportionate to its 2¼% interest in the part of the annuities available for reparation, in any distribution of railway bonds, industrial debentures or other bonds issued under the Dawes Plan, or in the proceeds of any sale of undisbursed bonds or debentures and as having the right also to share in any distribution or in the proceeds of any sale, of such bonds or debentures for any arrears that may be due to it in respect of the repayment of its army costs as provided in the present Agreement. The United States of America is also recognised as having an interest in any other disposition that may be made of the bonds if not sold or distributed.

ARTICLE 4.—*Belgian War Debt*

A) As from the 1st September 1924 5% of the total sum available in any year after meeting the charges for the service of the German External Loan, 1924, and the charges for Costs of Commissions; Costs of U. S. Army of Occupation; Annuity for Arrears of pre-1st of May 1921 Army Costs; Prior charge for current Army Costs; and any other prior charges which may hereafter be agreed, shall be applied to the reimbursement of the Belgian War Debt as defined in the last paragraph of Article 232 of the Treaty of Versailles.

B) The amounts so applied in any year shall be distributed between the Powers concerned in proportion to the amount of the debts due to them respectively as at — May 1921. Pending the final settlement of the accounts, France shall receive — % Great Britain 42% and Belgium (by reason of her debt to U. S. A.) 12%.

ARTICLE 5.—*Restitution*

A) There shall be applied to the satisfaction of claims for restitution :

a) During the first four years 1% of the total sum available in any year after meeting the charges for the service of the German External Loan, 1924, and the charges for Costs of Commissions: Costs of U. S. Army of occupation; annuity for arrears of pre-1st May 1921 Army Costs; prior charge for current Army Costs; and any other prior charge which may hereafter be agreed;

b) During subsequent years 1% of the balance of the first milliard after meeting the charges enumerated above and 2% of the surplus of the annuity.

B) The amount so applied shall be distributed between the Powers having a claim for restitution proportionately to their respective claims under this head as accepted by the Reparation Commission.

C) The French and Italian Governments reserve their rights to claim restitution of certain objects of art by the application of article 238 of the Treaty of Versailles. The other Allied Governments will support their efforts to secure the execution by Germany of such restitution. Nevertheless, if the fulfilment of this obligation involves a charge on the Dawes annuities the value will be charged against the share in the annuity of the Power interested.

ARTICLE 6.—*Belgian Priority*

A) It is agreed that the determination of the exact position as regards the satisfaction of the Belgian priority depends on the settlement of the distribution account which the Reparation Commission has been requested to draw up.

B) Out of the part of the annuities received from Germany and available for distribution as reparations among the Allied Powers after 1st September 1924, Belgium will receive :

a) During the year commencing 1st September 1924: 8%.

b) During the year commencing 1st September 1925, so long as Belgian priority is not extinguished 8% of each monthly payment. As soon as the priority is extinguished, the percentage of all further payments during the year in question will be reduced to 4.5%.

c) During the year commencing 1st September 1926 and during each succeeding year: 4.5%.

This reduction in percentage is accepted as fully discharging Belgium from her obligations to repay her priority.

C) As from the date at which Belgian priority is extinguished or at the latest from 1st September 1926, the 3½% released by the above arrangements for the repayment of the Belgian priority will be payable to France and Great Britain in the proportion 52:22, in addition to their Spa percentages.

The sums debited to Belgium in respect of the period of 1st September 1924, will not be regarded as creating for her either excess payments or arrears, provided that this shall be without prejudice to the liability of Belgium to account for any final balance under the Economic Clauses of the Treaty.

D) The right accruing to Belgium as a result of previous Agreements on payments received or to be received from or on account of Austria, Hungary and Bulgaria remain unaltered.

ARTICLE 7.—*Greek and Roumanian Reparation Percentages*

A) The percentage of reparation payments available for distribution between the Allied Powers to be allotted to Greece is fixed at 0.4 per cent of payments by Germany and of the first half of payments by Austria, Hungary and Bulgaria and 25 per cent of the second half of payments by Austria, Hungary and Bulgaria.

B) The percentage of reparation payments available for distribution between the Allied Powers to be allotted to Roumania is fixed at 1.1 per cent of payments made by Germany and of the first half of payments by Austria, Hungary and Bulgaria, and 20 per cent of the second half of payments made by Austria, Hungary and Bulgaria.

ARTICLE 8.—*Miscellaneous Claims*

A) The following claims namely:

- a) Costs of military occupation of the Plebiscite zones (Annex to Article 88 of Treaty);
- b) Costs of repatriation of German prisoners of war (Article 217 of the Treaty);
- c) Repayment of exceptional war expenses advanced by Alsace-Lorraine during the war, or by public bodies in Alsace-Lorraine, on account of the Empire (Article 58 of the Treaty);
- d) Payment of certain indemnities in the Cameroons and French Equatorial Africa (Articles 124 and 125 of the Treaty).

shall be submitted for valuation to the Reparation Commission which shall be at liberty to use for this purpose all the means at its disposal including reference to arbitration as proposed in Article 11 below.

The amounts of these claims, when established shall be credited to the interested Powers in their Reparation accounts as at the 1st September 1924, and the credits treated as arrears at that date in accordance with the provisions of Article 19 below.

B) The following claims would appear to be payable apart from and in addition to the Dawes annuities namely:

- a) The costs of the civil and military pensions in Alsace-Lorraine earned at the date of the Armistice (Article 62 of the Treaty);
- b) The transfer of the reserves of social insurance funds in Alsace-Lorraine (Article 77 of the Treaty). Should, however, the German Government succeed in establishing that these claims must be met out of the Dawes Annuities the Allied Government will concert together as to the manner in which they should be dealt with.

ARTICLE 9.—*Compensation due to the European Commission of the Danube*

There shall be paid forthwith to the European Commission of the Danube out of the Annuities the sum of 266,800 gold francs, being the amount agreed to be due from Germany to the Commission in respect of compensation for damages.

ARTICLE 10.—*Clearing Office Balances*

No special charge shall be admitted against the Dawes annuities in respect of Clearing Offices balances of pre-war debts or other claims under the Economic Clauses of the Treaty unless it is shown that any Allied Power claiming the benefit of such charge has a net credit balance due for payment, after applying, to meet its claims under the Economic Clauses, the Germany properties and other assets which it has the power to liquidate under the same articles. No provision shall be made for such net credit balances during the first four years of the Dawes Plan.

CHAPTER II.—SETTLEMENT OF PAST ACCOUNTS

ARTICLE 11.—*Distribution Accounts—Provision as to Arbitration*

The Allied Governments request the Reparation Commission to draw up as soon as possible definite distribution accounts as at 1st September 1924.

They will give authority to their respective Delegates on the Reparation Commission, to submit to arbitration all questions of fact or of figures arising on the accounts and to the fullest possible extent, questions of interpretation, on which they are not unanimous, in so far as is not already provided for in any existing arrangement.

The above provisions will apply in particular to the settlement of the Ruhr accounts in accordance with the principles set out below and to questions which may arise in regard to the amounts due under the heads of restitutions or other non-reparation claims.

ARTICLE 12.—*Ruhr Accounts*

- A) The Reparation Commission shall fix in accordance with the provisions of the Treaty of Versailles and the practice hitherto in force the value in gold marks of the receipts of every nature obtained by the French, Belgian, and Italian Governments from Germany since 11th January 1923, in so far as such

receipts have not already been accounted for to it. The Reparation Commission shall similarly determine the amounts to be set against such receipts with a view to securing that the Powers concerned receive credit for expenditure actually incurred by them, subject, however, to the detailed provisions below with respect to Army Costs.

B) Separate accounts will be drawn up for deliveries in kind and cash receipts.

C) The account of deliveries in kind shall include the value as determined by the Reparation Commission of:

1. Deliveries in kind not yet accounted for to the Commission including deliveries paid for from the "fonds commun" and the "fonds special".

2. All requisitions under or on the analogy of Article 6 of the Rhineland Agreement and all paper marks seized and fines imposed by the Armies of Occupation during the period 1st January 1923, up to the 31st August 1924, in so far as they have not already been reported to the Reparation Commission.

Against these receipts will be allowed as deductions the extra costs incurred by the French and Belgian Governments during the period 1st January 1923, to the 31st August 1924, through the maintenance of military forces in German territory not occupied on the 1st January 1923, after setting off the normal costs of the maintenance of these forces in their home garrisons.

The net value of the deliveries in kind so determined shall be debited in the reparation accounts against the Powers which have received them.

The value of coal and coke sold to Luxembourg during the same period shall be treated as a delivery in kind to France.

D) The account of cash receipts shall include cash receipts of all kinds obtained by the Occupying Powers including the gross amounts obtained from taxes or duties, licenses, derogations, etc. . . ., and the net receipts of the Railway Regie, as ascertained by the Reparation Commission after verification of the accounts.

From these receipts will be allowed as deductions the civil costs of collection and expenses of administration incurred before the 31st August 1924, and the costs of loading coal and exploitation of mines and cokeries up to the same date.

The balance of the account shall, with the exception of the sum mentioned in sub-paragraph 1 of parag. B of Art. 3, be paid over to the Belgian Government which shall be debited on account of the priority for the period before 1st September 1924, with the full amount so received less the interest due on the German Treasury Bills transferred to Belgium in 1922.

E) In accordance with Annexe III to the London Protocol no claim will be made for payment out of the Dawes annuities of any costs in respect of military forces in German territory not occupied on the 1st January, 1923, other than the value of requisitions effected by, or services rendered to these forces after 1st September, 1924. The value of such requisitions or services will be accounted for as deliveries on Reparation Account to the Allied Powers concerned.

CHAPTER III.—SPECIAL QUESTIONS ARISING OUT OF PREVIOUS AGREEMENTS

ARTICLE 13.—*Extension beyond January 1st, 1923 of the provisions of Article 2 of the Agreement of March 11, 1922: Appropriation of deliveries in kind to the costs of Armies of Occupation.*

The French, British, and Belgian Governments agree that the forfaits fixed, or to be fixed, for their respective armies of occupation from the 1st January, 1923, and until the 31st August, 1928, in so far as they are not met out of requisitions of paper marks and services, etc., under Article 6 of the Rhineland Agreement, should be charged on the deliveries in kind (including receipts under the British Reparation Recovery Act and any similar levy established by any other Government) received by them respectively, and the Reparation Commission is requested to give effect to this decision in its accounts.

ARTICLE 14.—*Extension beyond January 1st, 1923, of the Provisions of Article 6 of the Agreement of March 11, 1922: Retention by each Power of the Deliveries in Kind received by it*

Each of the Allied Governments having a credit due to it on reparation account shall be entitled to retain, without being required to make payment in cash for the value thereof, the deliveries in kind (including Reparation Re-

covery Act. Receipts) received and retained by them between the 31st December 1922, and the 1st September 1924. The receipts of each Power, however, up to the 1st September 1924, shall be taken into account in determining the adjustments provided for in Article 19.

ARTICLE 15.—Costs of the Armies of Occupation for the period 1st May 1922 to 31st August 1924

A) The credits to be given in respect of the costs of occupation for the period 1st May 1922 to 1st May 1924, are as follows:

	French share of forfeit	Belgian share of forfeit	British share of forfeit
May 1, 1922, to Apr. 30, 1923.....	<i>Gold marks</i> 155,520,603	<i>Gold marks</i> 30,680,153	<i>Gold marks</i> 21,092,022
May 1, 1923, to Apr. 30, 1924.....	117,105,330	23,284,022	22,300,567

B) As regards the costs of occupation for the period 1st May 1924 to 31st August 1924, the Allied Governments will authorise their representatives on the Reparation Commission to make the necessary adjustment on the basis of the principles on which the above figures were calculated.

C) The Reparation Commission is requested to introduce those figures into its accounts for the years in question.

ARTICLE 16.—Debits for the Vessels allotted or transferred to Belgium under Article 6 (4) of the Spa Protocol

The debits in the Interallied accounts for the vessels allotted or transferred to Belgium under Article 6 (4) of the Spa Protocol shall be dealt with under Article 12 of the Finance Ministers' Agreement of the 11th March 1922 instead of as provided for in the Spa Protocol.

ARTICLE 17.—Debit for Shantung Railways and Mines

In respect of the Railways and Mines referred to in the second paragraph of Article 156 of the Treaty of Versailles, Japan will be debited by the Reparation Commission in the Interallied accounts only with the equivalent of compensation which has been or may be in fact paid by the German Government to its nationals for their interests. Pending the establishment of the amounts in question Japan will be regarded as entitled to her full percentage of reparations as from 1st September 1924.

CHAPTER IV.—INTEREST AND ARREARS

ARTICLE 18.—Interest Account

The Allied Governments agree that all interest charges on reparation receipts up to 1st September 1924, should be waived as between the Allied Powers and all provisions in existing agreements requiring interest accounts to be kept to that date are cancelled. Interest at 5 % shall, however, be charged as from 1st September, 1924, on the excess receipts shown in the account to be drawn up under Article 19 below as due at that date by any Allied Power to the Reparation Pool as well as on any further excess receipts which may accrue after that date until they are repaid.

ARTICLE 19.—Excess and Arrears

A) The Reparation Commission shall as soon as possible draw up an account showing, as at 1st September, 1924, for each Power entitled to a share in the reparation payments of Germany, but not including the United States of America.

a) The net receipts of that Power on reparation account as at 1st September, 1924, which shall be calculated by deducting from its total gross receipts as valued for the purpose of Interallied distribution, the credits due to it in respect of Spa coal advances, of costs of Armies of Occupation (excluding the

arrears as at 1st May, 1921, provided for in Article 21), costs of Commissions of Control not paid in German currency, profits on exchange, and of any other approved claims such as the claims referred to in Article 8 A) of this Agreement;

b) The amount that Power should have received had the total net reparation receipts of all the Powers been distributed in accordance with the Spa percentages.

By deducting from the amount due to each Power its actual debit, the Reparation Commission will determine the arrears due to that power or the excess payments due from that Power as at 1st September, 1924.

B) A similar calculation shall be made by the Reparation Commission on the 1st September in each succeeding year.

C) For the purpose of the above calculations the figures relating to Belgium shall be included on the same footing as those relating to other Powers but, save as provided elsewhere in this Agreement, Belgium shall be free of any obligation to repay reparation receipts obtained before 1st September 1924.

Belgium shall, however, if the case arises, be required to account with interest for any excess of reparation receipts obtained by her after 1st September 1924, over her due proportion, as laid down elsewhere in this Agreement, of the total receipts effectively debited to all the Powers after that date. In the contrary case Belgium will be regarded as having a claim in respect of arrears.

D) The provisions of the second paragraph of Article 7 of the Agreement of 11th March 1922 relating to the debits to be entered in the account to be drawn up under Article 235 of the Treaty in respect of coal received by Italy before 1st May 1921, shall apply also to the debits for coal received by Italy between 1st May 1921 and 31st December 1922.

ARTICLE 20.—*Recovery of Arrears*

Except as otherwise provided for in this Agreement:

(A) The excess receipts of any Power as fixed at the end of each year under Article 19 shall be repaid by the deduction of a certain percentage from the share of that Power in each succeeding annuity until the debt is extinguished with interest at 5%, provided that no repayments under this subsection shall be required out of the annuities for the years commencing 1st September 1924 and 1st September 1925.

(B) In the case of Italy and the S. I. S. State this deduction shall be fixed at 10%. In the case of other countries the deduction shall be calculated by the Reparation Commission on a similar basis.

(C) The repayments made by the Debtor Powers shall be distributed between the Powers in credit to the Reparation Pool in proportion to their respective arrears.

ARTICLE 21.—*Costs of the Armies of Occupation to 1st May 1921*

The arrears due to France and Great Britain on account of pre-1st May 1921 Army Costs shall be excluded from the general account of arrears and shall be discharged by a special allotment out of the Dawes annuities (ranking immediately after the charge in favour of U. S. Army Costs) of the following amounts namely:

1st year.....	15 million gold marks.
2nd year.....	20 million gold marks.
3rd year.....	25 million gold marks.
4th year.....	30 million gold marks.

and thereafter an annuity of 30 million gold marks till the arrears are extinguished.

This allotment shall be divided between France and Great Britain in the proportions France 57%, Great Britain 43%. The allotment shall be taken in deliveries in kind during the first two years of the Dawes Plan and thereafter may be transferred either in deliveries in kind or cash. This arrangement will not affect the distribution of any cash receipts now in the hands of the Reparation Commission available for the liquidation of Army Costs arrears, which receipts will be dealt with in accordance with Article 8 of the Agreement of 11th March 1922 and credited against the capital arrears. Further, the annuity above provided for will retain a prior charge up to 25% of its amount on any cash receipts not arising out of the Dawes Plan which may accrue to the Reparation Commission in the future on account of Germany.

CHAPTER V.—MISCELLANEOUS QUESTIONS

ARTICLE 22.—*Payment by Czechoslovakia for Deliveries in Kind*

The sums due by Czechoslovakia to the Reparation Commission in respect of the deliveries in kind received by her from Germany and Hungary since 1st May 1921, shall be placed in a suspense account and carry interest at 5% from the 1st September, 1924.

ARTICLE 23.—*Bulgarian Payments*

Without prejudice to any question of principle, the payments made or to be made up to 31st December 1926, by Bulgaria under the Protocol of Sofia dated 21st March 1923, will be distributed between the Allied Powers in the proportions laid down in Article 2 of the Spa Protocol. The Allied Governments will agree together as to the method of distribution of these payments to be adopted after 31st December 1926.

ARTICLE 24.—*Properties ceded to the Free City of Danzig*

The Allied Governments give full powers to their respective representatives on the Reparation Commission to settle all questions connected with the debt due by the Free City of Danzig in respect of the value of the public properties ceded to the Free City by Germany, including such adjustments of the payments to be made by the Free City as may be necessitated by its financial situation.

ARTICLE 25.—*Recommendations with regard to Distribution of Payments throughout the year*

The Finance Ministers drew the attention of the Reparation Commission to the fact that the operation of the Dawes Plan would be greatly facilitated if the Agent General for Reparation Payments could so arrange that the annual payments to be made during the operation of the Dawes Plan may be distributed throughout the course of each year, and they request the Reparation Commission and the Agent General to consider what steps can be taken to secure this result, which is of particular importance during the second and third years of the Plan.

With a view to accomplishing this result the Allied Governments, so far as they are concerned, authorise the Reparation Commission and the Agent General for Reparation Payments in cooperation with the Trustees for Railway Bonds and Industrial Debentures to take all action that may be necessary to arrange the due dates of the payments to be made on the Railway and Industrial Bonds so as to provide for a gradual and even flow of payments throughout each annuity year.

Furthermore, the Finance Ministers authorise the Reparation Commission to make arrangements, so far as may be practicable without prejudicing the requirements of other powers, to enable the Portuguese Government to obtain during the earlier months of the second year of the Dawes Plan (within the limit of its share in the second annuity) the sums necessary to complete certain outstanding orders for deliveries in kind of special importance to it.

ARTICLE 26.—*Interpretation and Arbitration*

This Agreement shall be transmitted to the Reparation Commission, and the Commission will be requested to give effect thereto and to adjust the payments during the remainder of the year to 31st August, 1925, and during subsequent years, so that the total receipts of each Allied Power during each year shall not exceed its share under this Agreement. The Reparation Commission shall have authority by unanimous resolution to interpret the provisions of the Agreement, in so far as the Allied Powers are concerned. If any difference or dispute shall arise on the Reparation Commission or between the Allied Powers in respect of the interpretation of any provisions of this Agreement or as to anything to be done hereunder whether by the Commission or otherwise, the same shall be referred to the arbitration of a single arbitrator to be agreed unanimously by the members of the Reparation Commission, or, failing agreement, to be appointed by the President for the time being of the Permanent Court of International Justice.

Any difference or dispute that may arise with the United States of America regarding the interpretation of this Agreement affecting American claims or the rights of the United States of America under this Agreement shall be referred to an arbitrator to be agreed upon between the United States of America and the Reparation Commission acting unanimously.

ARTICLE 27.—*Reservation as to the Rights and Obligations of Germany*

The provisions of the present Arrangement concluded between the Powers interested in reparations do not prejudice any rights or obligations of Germany under the Treaties, Conventions and Arrangements at present in force.

The present agreement, done in English and French in a Single Copy will be deposited in the Archives of the Government of the French Republic which will supply certified copies thereof to each of the Signatory Powers.

In the interpretation of this Agreement, the English and French texts shall be both authentic.

Paris, January 14th, 1925.

CLEMENTEL.
G. THEUNIS.
WINSTON S. CHURCHILL.
MYRON T. HERRICK.
FRANK B. KELLOGG.
JAMES A. LOGAN JR.
ALBERTO DE' STEFANI.
K. ISHII.
L. M. DE SOUZA DANTAS.

EM. J. TSOUDEROS.
J. MROZOWSKI.
J. KARSNICKI.
ANTONIO DA FONSECA.
VINTILA BRATIANO.
N. TITULESCU.
STOYADINOVITCH.
STEFAN OSUSKY.

EXHIBIT B

REPLY OF GERMAN EMBASSY TO HON. WILLIAM R. CASTLE, CHIEF OF WESTERN EUROPEAN AFFAIRS, AS TO PAYMENTS BY GERMANY TO ITS OWN NATIONALS FOR PROPERTY CONFISCATED BY THE ALLIED POWERS

Memorandum

On April 12, 1926, the following questions were submitted to me by Mr. Castle:

(1) I should like to know whether the German Government has taken any assignment from German nationals covering property now in the hands of the Alien Property Custodian.

(2) Does the German budget for 1924-25 contain this provision: Settlement charges, compensation for losses due to sequestration and liquidation of German property in foreign countries, 289,000,000 marks? Does the 1925-26 budget contain a similar provision?

The first question I have already answered in the negative. After communicating with my Government I have merely to confirm my statement.

As regards the second question I have upon inquiry received the following information from my Government:

"The German budgets for 1924, 1925, and 1926 contain certain items for the allowances of compensation to German nationals whose property has been confiscated by victorious powers during or in consequence of the war. The table annexed hereto (Exhibit 1) specifies these items and shows the amounts actually granted and paid under them to German nationals. This table shows in particular that the item of 289,000,000 marks contained in the budget for 1924 and mentioned in Mr. Parker Gilbert's report of May 30, 1925, referred principally to losses caused to German nationals through compulsory measures (expatriation and expulsion from territories ceded to allied powers under the Versailles treaty) and to damage to German private property caused by hostilities within the former German colonies. Only 17,400,000 marks out of this item of 289,000,000 marks were granted and paid for damages caused by confiscation of property abroad. The corresponding items in the budgets for 1925 and 1926 are 89,700,000 and 4,141,200 marks, respectively.

"The German legislation dealing with the compensation of German nationals for losses sustained by confiscation of private property abroad is set out in detail in Exhibit 2. It appears from this exhibit that the compensation granted

by Germany in such cases averages 4.10 per cent of the pre-war value, that in case of confiscation of cash or securities the percentage allowable is only 2 per cent and that in all cases where the loss sustained exceeds 200,000 marks the percentage allowable for damages beyond this figure is only two-tenths of 1 per cent.

"German nationals whose property in the United States was taken over by the Alien Property Custodian under the trading with the enemy act have not received any compensation under the laws quoted in the annex and are not entitled thereto for the reason that their property has not been confiscated, but is merely being retained by the United States. If such property were to be confiscated by the United States they would thereby become entitled to the same rates as allowed to Germans whose property was confiscated by the allied powers. As, however, the assets held by the United States consist almost exclusively of cash and securities the percentage to be applied would with a few exceptions, be 2 per cent of the pre-war value for assets not exceeding 200,000 marks in each particular case and two-tenths of 1 per cent for all amounts exceeding this figure.

"It must be noted that the laws set out in the annex do not apply to ships taken by the United States during the war for the reason that the losses sustained by the German shipowners were settled on a different basis. The ship-building industry in Germany was a very important one, employing many thousands of mechanics and laborers, and the general welfare was especially involved in this question for the double reason that these workmen were not well adapted to other trades and that the acquisition of ocean-going vessels to enable Germany to undertake once more an export trade (which also involved the import of raw materials for her factories) was necessary if economic life was to be revived and the country enabled to live and to look forward to the payment of reparation obligations. It was therefore considered advisable instead of including the shipowners in the general compensation scheme to meet their requirements for once and all by the payment of a fixed amount under the condition that the sum as so granted was to be used for immediate reconstruction of at least a small part of the German merchant marine. The amounts allowed under this settlement were at first calculated in such a way as to equal about one-third of the pre-war value of the vessels in question. Due to the depreciation of the German currency, however, the sums paid out to the shipping companies decreased in value before they could be translated into the form of ships actually built to such an extent that they did not cover more than approximately 10 per cent of the peace value of the lost fleet. In view of this obvious inadequacy it was expressly provided that the shipowners could retain for themselves any sums which they might afterwards receive from foreign governments on account of lost tonnage. As far as the ships taken in American ports are concerned the situation to-day is that the former owners have not been compensated for them from any source whatsoever and that in the event the United States make compensation for these losses the amounts awarded would go to the former owners exclusively, the German Government having no charge on or share in the amounts thus paid.

"Washington, D. C., April 20, 1926.

EXHIBIT 1

Appropriations for compensating German nationals for losses caused by confiscation of private property abroad and payments actually made under such appropriations

	Amounts appropriated for confiscation damages and other war losses ¹	Amounts paid for confiscation damages	Amounts paid for other war damages
1924.....	320,710,000 marks (\$76,328,980)	17,400,000 marks (\$4,141,200)	82,100,000 marks (\$19,539,800)
1925.....	73,000,000 marks (\$17,374,000)	89,700,000 marks (\$21,348,000)	196,500,000 marks (\$46,767,000)
1926.....	50,000,000 marks (\$11,900,000)	4,400,000 marks (\$1,047,200)	

¹ The appropriations do not distinguish between the different classes of war damages.

Up to 1924 there had been paid for confiscation damages altogether 208,700,000 marks (\$48,242,600). The total sum up to now paid for this purpose, including the amounts paid up to 1924 and the amounts set out above, is 314,200,000 marks (\$74,779,600).

EXHIBIT 2

Article 297(i) of the Versailles treaty provides as follows:

"Germany undertakes to compensate her nationals in respect of the sale or retention of their property, rights, or interests in allied or associated states."

The aggregate value of the private property to which this article applies has been estimated at 11,000,000,000 gold marks, or \$2,618,000,000, exclusive, however, of private property retained by the United States.

In order to execute this provision the German constituent national enacted a law on August 31, 1919, providing that "appropriate compensation" should be paid to German nationals for seizures, retention, or confiscation of their property, rights, or interests under the treaty of Versailles.

In consequence of the financial difficulties confronting Germany after the war, and in particularly in view of the reparation problem, it was not feasible for a long time to establish definite principles as to the amounts payable under this law. It was merely possible to make certain provisional payments in order to meet the most urgent needs. Up to the time when the German finances collapsed in 1923 these payments had reached the aggregate amount of approximately \$48,000,000.

The paramount purpose of balancing the budget in order to lay the foundation for the stabilization of the German currency at the end of 1923 made it necessary for Germany to cut down her expenditures to the utmost minimum. Under the pressure of that emergency the Reichstag on November 20, 1923, enacted a law fixing the compensation payable for private property, rights, and interest lost on account of seizure and confiscation to two-thirds of 1 per cent of the peace value in general and to five-tenths of 1 per cent in certain exceptional cases of hardship.

After the budget had been successfully balanced and the currency stabilized the German Government found it possible to yield to the urgent demands of her nationals and to raise the rates of compensation from what was practically nothing to at least some tangible percentage for losses not exceeding the amount of 200,000 marks (or \$47,600), and to take better care of cases where the confiscatory measures applied by the victorious powers had practically ruined the existence of the persons affected thereby. As far as the damage done exceeded the amount of 200,000 marks the above-mentioned rate of two-tenths of 1 per cent remained intact.

Under these new regulations issued by the German Government, with the consent of the Reichstag on April 4, 1925, the former owners of confiscated property are entitled to the following rates:

I

Indemnity rates applicable to cash assets and securities.

The general rate of compensation allowable for loss of cash assets or securities is 2 per cent of the peace value, the absolute maximum payable to any one person for such losses being limited to 16,000 marks.

In the exceptional case that securities formed part of an industrial or commercial enterprise which was confiscated as such the rates described below under II are applicable.

II

Indemnity rates applicable to tangible property.

The rates allowable for loss of property (real estate, plants, factories) are as follows:

(a) In the event that the peace value of the property confiscated does not exceed 50,000 marks (or \$11,900):

	Per cent
For the first 2,000 marks	100
For the next 28,000 marks	10
For the further 20,000 marks	6

(b) In the event that the peace value of the property confiscated exceeds 50,000 marks but does not exceed 200,000 marks (or \$47,400):

	Per cent
For the first 50,000 marks	12
For the next 50,000 marks	8
For the further 100,000 marks	6

(c) In the event that the peace value of the property confiscated exceeds 200,000 marks:

For the first 200,000 marks, 8 per cent.

III

INDEMNITY RATES APPLICABLE TO DEBTS

As to debts owing to German nationals that have been liquidated under the Versailles treaty the compensation rates described above under II apply only in so far as such debts formed part of an industrial or commercial enterprise which was confiscated as such. Otherwise the rate of two-tenths of 1 per cent applies.

The present regulations are to be considered as final. The German nationals affected by the confiscatory measures applied to their property by the allied powers have no hope for a further increase of the indemnification rates beyond the above limits, since any improvement of Germany's capacity to pay will have to yield primarily to an increase of the payments to be made by her under the Dawes plan for her obligations arising out of the war.

EXHIBIT C

The German federal act of June 4, 1923, contains the following proviso concerning taxation of German private property seized and later on returned by one of the victorious powers:

PARAGRAPH 18

If a power, formerly an enemy, releases entirely or in part the German-owned assets seized by it in favor of the parties entitled thereto or if it in case such assets had been liquidated puts their net proceeds wholly or in part at the disposal of the parties entitled thereto, without being obligated to do this under the provisions of the Treaty of Versailles and without receiving an adequate consideration therefor from Germany, the assets and moneys mentioned above are exempted from the Federal taxes enumerated in paragraph 12, clause 2; paragraphs 1 to 8 of this act¹ in the way prescribed in clauses 2 to 6 of this paragraph.

As regards the exemption from the war tax on increment of wealth, the emergency levy and the capital levy the provisions of paragraph 13 apply.²

As regards the income tax and the corporation income tax, the assets mentioned in clause 1 or the moneys paid in compensation therefor are to be left out of consideration in fixing the taxable income accruing in the year during which the assets are being returning or the moneys paid to the parties entitled thereto.

As regards the property tax, it is provided that the assets and moneys referred to in clause 1 will be exempted from this tax when it is first levied.

As regards the levy on increment of wealth, the assets referred to in clause 1 are to be deducted from the taxable increment. * * * The same rule applies as to the moneys referred to in clause 1. * * *

As regards the inheritance tax, the assets and moneys referred to in clause 1 are exempted in favor of persons designated in paragraph 17, clause 13,³ provided the claim for return or compensation arose in the person of the decedent, provided further that the succession does not take place more than five years after the return or payment and that until the death of the decedent the support of the heir had been paid to a considerable extent out of the proceeds of the estate.

¹ The taxes enumerated in paragraph 12, clause 2, paragraphs 1 to 8, are the following: (1) The war tax on increment of wealth; (2) the Federal emergency levy; (3) the capital levy; (4) the Federal income tax; (5) the corporation income tax; (6) the property tax and the forced loan; (7) the tax on increase of property; (8) the inheritance tax.

² Paragraph 13 provides that the assets and monies in question are to be left out of consideration in fixing the amount of the taxable property.

³ Descendants, parents, husband, and wife.

EXHIBIT D

A STATEMENT ON THE RETURN OF ALIEN PROPERTY AND SETTLEMENT OF
AMERICAN CLAIMS AGAINST GERMANY

In considering the return of German alien property and the settlement of American claims, your attention is respectfully invited, first, to the interests of the United States and the importance of its fixed policies with regard to the safety of private property.

OUR DOMESTIC INTERESTS

During the last century international law had developed a policy of giving complete protection to private property in the event of war, and practically all of the civilized nations respected this policy of protecting private property. The United States for a hundred and fifty years has maintained this policy firmly without a single departure. In 1802 it paid Great Britain approximately \$3,000,000 to settle claims arising from confiscatory acts of individual states during the preceding war. The reason for this policy was as stated by Jefferson, Hamilton, and others responsible for the Constitution of the United States. That is, that when individuals confided themselves and their property to the hospitality and protection of our Government; when they loyally subjected themselves to our laws; when they paid taxes and created values by their industry and intelligence, there arose an implied contract between such individuals and the government that they were entitled to protection, even if the foreign government of which they might be subject, should engage the United States in war.

Obviously, such individuals were innocent of making war, and the making of war by our Government could not be justly held to break the social compact, implied or actual, between them and our Government. Our Government, therefore, by the Constitution does pledge protection of their property against confiscation by numerous provisions. In consequence of this policy long pursued, the United States became a haven to which men might repair confiding in the safety of their private property invested in the United States. As an obvious result, hundreds of millions of dollars came to America and were invested in America, and the United States became of increasing industrial, commercial, and financial importance. Huge sums of money were borrowed from abroad and invested in the United States, by which our railroad system was built up and many industries were transplanted from abroad to the United States as a place both of profit and safety.

If we should now confiscate the German alien property and hold these individuals responsible for the alleged wrongdoing of the old German Imperial Government, or of the present democratic German Republic, we should be serving notice on all the world that the ancient and honorable standards set in the United States for the safety of private property could no longer be relied on.

Obviously, this would be a very serious reason to prevent in future the free flow of capital for investment in the United States from abroad, and would thus interfere with the greater future prosperity which America might otherwise attain. It would be against our present domestic financial interest.

Moreover, it would be against the honor and good repute of the United States abroad, because such an act, in violating our executive and legislative promises, would lower in the estimate of the world the good name of the United States Government, which has the opportunity now of setting a standard of high principle throughout the world. This is peculiarly the case because by the treaty of Versailles private property of aliens was in effect confiscated by Great Britain, by France, by Italy, by Belgium. These Governments have injured their own standing, by this disregard and violation of the rights of private property, a fatal principle which led, perhaps, to the extreme disregard of private property by the Communists and Bolshevik throughout Europe. It is to the national interest of America to stand strenuously against the Bolshevik doctrine, or any doctrine which disregards the rights of private property, upon which civilization itself is based. For that reason the domestic policy of the United States should stand steadily for the safeguarding of private property and complete protection to the owners of the German alien property now held by the United States Government, as well as for the protection of the American claimants whose property has been put in jeopardy by war and who now seek the protection of their own government in the measures which your honorable committee is considering.

OUR FOREIGN INTERESTS

It is of equal importance to the United States in relation to our foreign affairs that we should treat private property as a sacred right.

The United States during the last 10 years has had an enormous development in its industrial, commercial, and financial life, and the present known outstanding investments of the United States and its nationals abroad exceed \$20,000,000,000.

If we treat the right of private property lightly or inconsiderately, we thereby set a false precedent which may be infinitely injurious to the United States. If we confiscate private property invested in the United States in disregard of our own Constitution and legislative pledges, we should not be surprised if other nations should avail themselves of such an evil precedent to confiscate the private property of our citizens and bring on international complications of dangerous consequences. The great friction which has taken place between our Government and other Governments where American property has been put in jeopardy on a serious scale will readily occur to your honorable committee. The German alien property, amounting possibly with its deductions to \$200,000,000, is only one-hundredth part of the American investments abroad.

Our foreign economic interests, therefore, require that we should not put in jeopardy such interests by establishing a bad precedent. We should not be influenced by those nations who have in the stress and excitement at the ending of the great war violated this principle. It is clearly evident that their present financial embarrassment and difficulty of getting credits on a favorable basis are partly due to the sense of insecurity which has been brought about by this unwise policy. Their grave blunder in disregarding their own previous better policies is a warning to us and not an example.

Therefore, in considering the question of the German alien property and the settlement of American claims, our own national, domestic, and economic interest should be well considered as of the greatest importance in guiding our action in regard to such settlements.

America has now the opportunity to maintain and set precedents of far-reaching consequences to the great future of the United States and to the world itself. We feel justified; therefore, in submitting to your honorable committee the further consideration which justifies your committee in recommending to Congress the complete settlement of these questions.

THE HONOR AND DIGNITY OF THE UNITED STATES

Separate and apart from all economic considerations is the honor and dignity of the United States. The devotion of the American people to their Government is due to the fact that they entertain a profound respect and love for the Government of the United States, because they know that that Government is incapable of conscious wrong; that they are justified in entertaining the deepest sentiment of honor and respect for that Government; that that Government fulfills every just obligation; that its dignity and its honor are kept immaculate by the Representatives of the American people. And nothing could make amends to have this faith of the people weakened in any degree by an act of Congress or by an omission to act by Congress, which would show that the Congress of the United States was in any way indifferent to the legislative and executive pledges and commitments of this Government. So that our honor and our dignity alike require the most scrupulous consideration in disposing of this important question.

We therefore feel every confidence in submitting the following observations with regard to the questions before your committee:

First. The question of the return of the German alien property.

GERMAN ALIEN PROPERTY RETURN

We submit that the German alien property owners should have relief at the present session of Congress.

For nine years they have been deprived of their property. Even if Congress acts now, it will take from one to two more years to make the settlements. Their need has been, and is known to be, serious.

It is conceded that as private individuals, trusting their large investments entirely to the protection and the justice of the United States, they were not responsible for the World War which was ruinous to them.

TREATY PROVISIONS

They came under the mutual protection of the Government of the United States and of the former Imperial Government of Germany; under the special treaty provisions of the United States and Prussia of 1799, article 23, as renewed by article 12 of the treaty of 1828, and of the principles declared by the United States in the Jay treaty of 1794, article 10.

The treaty between the United States and Prussia of 1799 provided as follows:

"ART. 23. If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs; and may depart freely, carrying off all their effects without molestation or hindrance; and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

"And it is declared that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations."

This article was renewed by article 12 of the treaty of 1828, in force when the property was taken over. (See vol. 2, Malloy Treaties and Conventions, p. 1494.)

Article 10 of the Jay treaty of 1794 provided:

"Neither the debts due from individuals of one nation to individuals of the other, nor shares, nor moneys, which they have in the public funds, or in the public or private banks, shall ever in any event of war or national differences be sequestrated or confiscated, it being unjust and impolitic that debts and engagements contracted and made by individuals, having confidence in each other and in their respective governments, should ever be destroyed or impaired by national authority on account of national differences and discontents."

The United States Government in pursuance of this just policy under the treaty of January 8, 1802, paid Great Britain some \$3,000,000 to make good acts of confiscation against British subjects practiced by some of the States in the Revolutionary War.

UNITED STATES CONSTITUTION

They came under the special protection of the Constitution of the United States, which having taken every precaution to secure the protection of private property, declares as a fundamental principle:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures."

It expressly declares that this right "shall not be violated."

It declares that private property shall not be taken for public use without just compensation. It makes no provision for taking private property for private use, even with compensation.

Amendment 5 especially declares:

"No person shall be deprived of life, liberty, or property without due process of law."

The word person, as used in this amendment, is not confined to a citizen, but covers any person of foreign allegiance domiciled in America, or doing business in America.

The Constitution provides adequate means of protecting property rights against private, as well as public, trespass.

The Constitution makes the principle of holding private property inviolably binding on the 48 States, and says:

"Nor shall any State deprive any person of life, liberty, or property without due process of law."

The Constitution forbids any State to pass any bill of attainder or law impairing the obligation of a contract.

These constitutional provisions were based on the principles enunciated by Thomas Jefferson, Alexander Hamilton, Benjamin Franklin, George Washington, and were based upon fundamental justice, sound morals, and wise international policy.

The authors of the Constitution held that when the Government admits foreigners, or invites them to bring property into the country, to pay taxes, to obey and uphold the law, the Government thereby tacitly pledges protection and security to such tax-paying foreigners. That such aliens subject to the civil and criminal law in war as well as in peace, by their loyal obedience to the law, are entitled to protection. That the seizure of their property, therefore, and its confiscation, would not only violate the implied contract of hospitable residence, but would violate every rule of justice and equity.

In his *Camillus Letter 18*, Alexander Hamilton said:

"No power of language at my command can express the abhorrence I feel at the idea of violating the property of individuals, which, in an authorized intercourse in time of peace, has been confided to the faith of our Government and laws, on account of controversy between nation and nation. In my view, every moral and every political sense unite to consign it to execration."

Alexander Hamilton, in 1794, discussing the treaty between the United States and Great Britain, urging the doctrine of the protection of private property, said:

"Moreover, the property of the foreigner within our country may be regarded as having paid a valuable consideration for its protection and exemption from forfeiture; that which is brought in, commonly enriches the revenue by a duty of entry. All that is within our territory, whether acquired there or brought there, is liable to contributions to the Treasury, in common with other similar property. Does there not result an obligation to protect that which contributes to the expense of its protection? Will justice sanction, upon the breaking out of a war, the confiscation of a property which, during peace, serves to augment the resources and nourish the prosperity of a State? * * * Renson, left to its own rights, would answer all these questions in one way, and severely condemn the molestation, on account of a national contest, as well of the property as of the person of a foreigner found in our country, under the license and guaranty of the laws of previous amity."

It was under this policy that the United States paid Great Britain some \$3,000,000 to make good certain acts of confiscation against British subjects practiced by some of the States in the Revolutionary War.

The United States Supreme Court has held, through John Marshall, Chief Justice (*U. S. v. Percheman*, 7 Peters 51) that while in waging war the United States has, as one of its war powers, the right to confiscate, still—

"The modern usage of nations, which has become law, would be violated; that the sense of justice and of right, which is acknowledged and felt by the whole civilized world, would be outraged, if private property should be generally confiscated and private rights annulled."

The United States never has, even in war, in a hundred and fifty years confiscated alien private property.

CONFISCATION WOULD VIOLATE EXECUTIVE PLEDGES

When this country was threatened with the renewal of the submarine warfare, and war was contemplated, and the probable consequences, and alien property owners began to withdraw deposits from America, the President of the United States on February 18, 1917, through the Department of State, made the following official declaration:

"The Government of the United States will under no circumstances take advantage of a state of war to take possession of property to which, under international understanding and recognized law of the alien, gives it no just claim or title. It will scrupulously respect all private rights alike of its own citizens and subjects of foreign states."

The President of the United States said on April 2, 1917:

"We have no quarrel with the German people. We have no feeling toward them but one of sympathy and friendship * * *. We are but one of the champions of the rights of mankind. We shall be satisfied when these rights have been made as secure as the faith and freedom of the United States can make them."

The President, on April 6, 1917, pledged the protection of all enemy aliens and said they would be "accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States."

The President, replying to Pope Benedict, said, referring to the Germans in Europe, that the American people "desire no reprisal upon the German people, who have themselves suffered all things in this war which they did not choose."

In his message to Congress December 4, 1917, he said:

"No nation or people shall be robbed or punished because the irresponsible rulers of a single country have themselves done * * * wrong."

The President said, on April 6, 1918:

"We, ourselves, propose no injustice, no aggressions. We are ready whenever the final reckoning is made to be just with the German people."

CONFISCATION WOULD VIOLATE LEGISLATIVE PLEDGES

TRADING WITH THE ENEMY ACT

The trading with the enemy act, approved October 6, 1917, shows on its face, by its context, by the manner of its presentation to Congress, by the testimony before the committees, by the reports of the committees of Congress, by the debates in Congress, that it had no intention whatever to confiscate alien property or to dishonor the pledges made by the President of the United States and by the Secretary of State immediately preceding the presentation of this bill to Congress.

The act was intended as a war measure to control trade and communication between citizens of the United States and citizens of Germany to prevent alien property being used to the disadvantage of the United States during the war, to give complete security to alien property, and to safely return it after the war or to make a just settlement, as promised by the President.

This act was drawn under the direction of the President of the United States and passed at the request of his administration for the above purpose. It was elaborately explained to Congress by Hon. Robert Lansing, Secretary of State, Hon. William C. Redfield, Secretary of Commerce, Hon. Charles Warren, Assistant Attorney General, Dr. Edward E. Prenty, Chief of the Bureau of Foreign and Domestic Commerce, under whose direction the act was drawn, before the committee May 29, 1917, page 13, that the bill was intended for the protection of alien property. Secretary Redfield, speaking for Mr. Lansing, in his presence, said:

"The creation of an Alien Property Custodian is a novelty and is in line with that same effort toward equity which impels us to indicate an earnest desire to show to the people with whom unfortunately we are engaged in war that here is the opposite of confiscation and here is the opposite of requisition."

Mr. Lansing said that the act "will put it in the hands of the Government to protect the property, and it will avoid any lawless acts against it."

Mr. Warren said: "It is merely a temporary taking over of an enemy property; its conservation is in the hands of the Alien Property Custodian."

Both the Senate committee report and the House committee report (H. R. Rep. 685, 65th Cong., and S. Rep. 113, 65th Cong.) expressly declare the same principles and that the act did not contemplate confiscation.

The debates in Congress demonstrated the same purpose exclusively.

Mr. Montague said the act of taking over the property was done "to conserve the interests of America in this great struggle, and at the same time its final and honest payment to the creditors is made more secure."

Mr. DeWalt said: "This property is not confiscated at all." He also said that the bill was not in violation of The Hague convention of 1907, which expressly provides for the protection of private property on land, and said: "It was in conformity with that idea that the proclamation of the President as early as last June was made, reaffirming the doctrine that private property should not be confiscated and that the provisions of this bill were made as they are."

Upon the suggestion of Mr. Stafford that Congress might, after the war, neglect to act, that it would have the effect of confiscation, Mr. Snook said: "Does the gentleman think that Congress will assume that position? Has the gentleman so little confidence in the Congress of the United States as to think it will not act fairly and justly with those men?"

COURT DECISIONS

The courts decided against confiscation in Pennsylvania Supreme Court (266 Pa. St. 189) and said: "The trading with the enemy act is not for confiscation of property; it is rather for its preservation. While, if the President so directs, the money or property of alien enemy may be taken by the Government for its own purposes, the owner does not part absolutely with it if, after the end of the war, his claim to it shall be settled as Congress shall direct." This decision was confirmed by the United States Supreme Court.

In the Forty-sixth New York Supreme Court Reports, page 175, the court says: "In the exercise of its plenary power in this matter, Congress might have provided for the confiscation of enemy property, but it did not do so. The act on its face is plainly not confiscatory."

The decision of the Supreme Court in the case of the *United States v. Chemical Foundation* does not negative this sound doctrine. The issue of the Chemical Foundation case was whether title passes to the Chemical Foundation by sale of the patents by the Alien Property Custodian to that corporation. The court held that as a matter of law that the sale during war of said property was valid, but this does not mean confiscation even in time of war, because the promise of the President of the United States and of the Congress of the United States to make just settlement after the war sufficiently cover the case and left an open forum for the settlement of any claim for damage arising. No individual instance had occurred under which the Alien Property Custodian should have disregarded the rights of an alien property owner that would change the purpose of the executive and legislative branches of the Government to which we have referred above.

Hon. Charles Evans Hughes, Secretary of State, in an address at Philadelphia, November 23, 1923, said: "A confiscatory policy strikes not only at the interest of particular individuals but at the foundations of international intercourse, for it is only on the basis of security of property, validly possessed under the laws existing at the time of its acquisition, that the conduct of activities in helpful cooperation is possible, * * * rights acquired under its laws by citizens of another state, a state is under an international obligation appropriately to recognize, it is the policy of the United States to support these fundamental principles."

THE LANGUAGE OF THE ACT

The language of the act shows the act was intended as a war measure only to control trade and communication between citizens of the United States and citizens and residents of Germany, and to prevent alien property being used to the disadvantage of the United States during the war, to give security to alien property and safely return it after the war or settle damage done.

The Alien Property Custodian, section 6, was empowered to receive all money and property belonging to a nonresident enemy.

German citizens in the United States holding property were not molested in person or property unless, as in a few negligible cases, by presidential proclamation they were declared enemies.

The Alien Property Custodian was to receive the property, "to hold, administer, and account for the same under the general direction of the President, and as provided in this act." But the President was expressly pledged not to confiscate but to protect the property and faithfully account for it when the war is over.

The alien property owners residing in Germany, left their properties in the United States under the pledge of a German-American treaty, under the constitutional protection of the United States, under the unbroken policy of 150 years, under the protection of The Hague Convention of 1907, and the international obligation of the United States, under the executive pledges of the Secretary of State and of the President of the United States, and were perfectly justified in doing so. To confiscate the property now or to continue to retain it with the effect of confiscation, would clearly dishonor the pledges made by the Chief Executive of the United States, and the obligations of the Congress itself.

The Alien Property Custodian was "vested with all of the powers of a common law trustee in respect of all property other than money," and "under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof," necessary to prevent waste. "To protect such property to the end that the interests of the United

States in such property and rights of such person as may ultimately become entitled thereto or to the proceeds thereof, may be preserved and safeguarded." This language is entirely inconsistent with the confiscation of the property.

Section 12 declares: "After the end of the war any claim of any enemy or of an ally of an enemy to any money or other property received and held by the Alien Property Custodian, or deposited in the United States Treasury, shall be settled as Congress shall direct." This language was discussed in Congress and its meaning explained to be that an honest accounting should be made to the owner and the return of the property or its value after the war was ended.

Section 16 imposed a penalty for willful violation of the provisions of the act that "any property, funds, security papers or other articles or documents or any vessel," etc. "concerned in such violation shall be forfeited to the United States."

This language is entirely inconsistent with the idea that the property was intended to be confiscated by the United States except for a willful violation of the act itself. At a later date, March 28, 1918, the President of the United States was authorized to acquire the title of the docks, piers, warehouses, wharves and terminal equipment facilities on the Hudson River, now owned by the North German Line Dock Co. and the Hamburg-American Line Terminal & Navigation Co., two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: *Provided*, that if such property cannot be procured by purchase, then the President of the United States is authorized and empowered to take over for the United States the immediate possession and title thereof. If such property shall be taken over, as aforesaid, the United States shall make such compensation therefor to be determined by the President. Upon the taking over of sa'd property by the President, as aforesaid, a title to all such property so taken over shall immediately vest in the United States."

But the President was fully committed by his own proclamation and by the policy of the government not to confiscate, but to account for such property uprightly. A plan for such adjustment is now being considered by your honorable committee, upon the recommendation of the Secretary of the Treasury, representing the President of the United States. The language of this latter amendment shows there was no intent to confiscate.

On March 28, 1918, the act was further amended to give the custodian under the President, the power to dispose of such properties by sale or otherwise "in like manner as though he were absolute owner thereof." This amendment was necessary to enable the custodian, as trustee, to convey a title free from doubt to protect the property itself. It often became necessary to dispose of assets which otherwise might be perishable, but there was no negation whatever of the duties of the trustee to continue to act faithfully as a trustee, nor was there any modification of the pledge by Congress, after the end of the war, to make a just settlement as promised by the President.

It was under this act, as amended, that the chemical patents relating to explosives, gases, medicines, etc., were sold to the Chemical Foundation before the end of the war. The Chemical Foundation was not organized for profit, but for public fiduciary purposes, to make available to the chemical industries of the United States the important patents necessary for war-making purposes and for purposes of defense. The Supreme Court held at the October term, 1920, that there was no conspiracy or fraud in such sale and that a good title passed regardless of the consideration paid. The reasoning is clear, and there is nothing inconsistent with the trading with the enemy act in this decision, for the very sound reason that the owners of the patents were provided a remedy in the law itself, and because the executive and legislative branches of the government were pledged to a just settlement when the war was over, and no injustice is done under these circumstances, only in the event that a fair and just settlement were refused could a complaint of injustice be made.

The Alien Property Custodian has advised the return of the property.

THE CAUSES OF THE DELAY IN RETURNING GERMAN ALIEN PROPERTY

The treaty of Versailles, officially terminating the war, went into effect January 10, 1920. It was submitted to the Senate of the United States and subjected to a prolonged discussion which finally terminated at the close of the Wilson administration in a refusal to accept it.

The new administration of the Sixty-seventh Congress came into power March 4, 1921. On July 2, 1921, the Knox-Porter resolution was passed declaring the

war at an end and declaring that the United States and its nationals were entitled to all rights accruing, under the terms of the armistice signed November 11, 1918, or under the treaty of Versailles, or as to one of the principal allied and associated powers.

It further provided (sec. 5): "All property of the Imperial German Government or its successor or successors, and of German nationals which was on April 6, 1917, in, or has since that date come into, the possession or under control of, or has been the subject of a demand by the United States of America, or of any of its officers, agents, or employees from any source, or by any agency whatever * * * shall be retained by the United States of America, and no disposition thereof made except as shall have been heretofore, or specifically hereafter shall be provided by law, until such time as the Imperial German Government * * * or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Government of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered through the acts of the Imperial German Government or its agents * * * since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German * * * American or other corporations, or in consequence of hostilities or of any operations or war or otherwise," etc.

The Knox-Porter resolution also demanded the "most favored nation" treatment; and confirmation to the United States by Germany of "all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals" * * * "and shall have waived any and all pecuniary claims against the United States of America."

Retaining the German alien property except and until provided by law was already the United States statute law under the trading with the enemy act and Germany being required to agree to it was merely a method of requiring Germany to agree to existing law until Germany made "suitable provision" which Germany was anxious to do.

The obvious intention of the Knox-Porter resolution was not to confiscate German property but to retain it until the German Government had complied with the demands made.

The German Government did comply to the extreme limit of its capacity by the treaty of Berlin. (Hearings, Part III, pp. 17-24.)

THE BERLIN TREATY

On the 25th of August, 1921, the plenipotentiaries of the German Commonwealth and of the United States entered into a treaty of peace, reciting the armistice, the treaty of Versailles of June 28, 1919, and the Knox-Porter resolution of July 2, 1921, as follows:

"Being desirous of restoring the friendly relations existing between the two nations prior to the outbreak of war"—

Article I. "Germany undertakes to accord to the United States and the United States shall have and enjoy all the rights, privileges, indemnities, reparations, or advantages specified in the aforesaid joint resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the treaty of Versailles, which the United States shall fully enjoy, notwithstanding the fact that such treaty has not been ratified by the United States."

At the time of the Berlin treaty, August 25, 1921, the German Government was under the military, financial, and commercial control of the allied and associated powers. The treaty of Versailles had been enforced by a famine blockade, and the threat of an immediate resumption of war if the Government of the German commonwealth refused to submit to the treaty of Versailles, as dictated.

The President of the United States in October, 1918, had demanded the abdication of the German Imperial Government, William II and his dynasty, against which the Government of the United States had waged war. William II and the Hohenzollern dynasty abdicated prior to the armistice of November 11, and on November 9, 1918, a revolution took place in Germany to establish such a government as that demanded by the President of the United States, and desired by an overwhelming majority of the German people.

Frederick Ebert, leader of the German social democracy, on November 10, assumed the chairmanship of the council of people's commissioners. The hereditary rulers and other German kings, princes, and notables, followed the action of William II. They all stipulated abdication or acquiesced in their deposition. The military masters of Germany were overthrown. The United States had accomplished its declared purpose in waging the war.

On November 30, regulations for an election were framed to elect representatives to a constitutional convention. These regulations established the principles of universal, direct, secret, and equal suffrage for all German men and women of 20 years of age or more on the date of election. Proportional representation was established. The election was held January 19, 1919, and a provisional government was established February 10, 1919. The convention was composed of 423 delegates from 38 districts, elected by proportional representation.

Social Democrats-----	163
The Center (Catholic)-----	90
German Democratic (progressive)-----	75
German National People's Party (conservative)-----	42
German People's Party-----	22
Independent Social Democrats (radical)-----	22

The monarchist element was thus demonstrated by proportional selection to have been practically eliminated by this vote of the German people. The constitution of the German Commonwealth was adopted on July 31, 1919, and became effective by executive order August 11, 1919. A new cabinet had been organized by Gustavus Bauer. (See Constitution of the German Commonwealth by Monroe and Holcomb, Harvard University, published by the World Peace Foundation, 40 Mount Vernon Street, Boston.)

Under this treaty seeking to "restore friendly relations" with the German people shall we confiscate any part of the private property of the citizens of Germany and now, in time of peace, violate our Executive and legislative pledges to them on the theory it will profit us in money to do so?

THE GERMAN LAW ON EXPROPRIATION

The term "Reich" now means "Commonwealth" or "Republic," representing a national union of States.

Section 1, Article I, declares as follows: "The German Commonwealth is a Republic. Political authority is derived from the people."

Article 7 provides, among other things, for jurisdiction in conjunction with the States of—

"12. The law of expropriation." (Confiscation is not recognized.)

Article 153 recites: "The right of private property is guaranteed by the constitution. Its nature and limits are defined by law. Expropriation may be proceeded with only for the benefit of the community and by due process of law. There shall be just compensation in so far as is not otherwise provided by national law. If there is a dispute over the amount of the compensation, there shall be a right of appeal to the ordinary courts in so far as not otherwise provided by national law."

Article 178 declares as follows:

"The constitution of the German Empire of April 16, 1871, and the law of February 10, 1919, relating to the provision of government of the commonwealth are repealed."

"The other laws and regulations of the Empire remain in force in so far as they do not conflict with this constitution. The provisions of the treaty of peace, signed on June 28, 1919, at Versailles, are not affected by the constitution."

The other laws and regulations of the empire remaining in force provide that the ex-appropriation of private property is a matter of state law under which a private property owner may have his property appropriated for public purposes upon just compensation, with a right of hearing in the state court. In this manner the rights of private property of a German citizen is protected under the German State law. The German Government in agreeing to the Berlin treaty that the German Government accords to the United States the right to retain all private property of German citizens in the United States until suitable provision was made by the German Government for the satisfaction of all claims against that Government would have had no option even if confiscation

of vested private property had been contemplated. But that Government had no reason to believe, it is respectfully submitted, that when the German Government did everything in its power to make suitable provision, that then the United States would resort to confiscation of the private property of the German nationals under American protection if the American claims were not fully and immediately liquidated on a cash basis.

The German Government therefore had no constitutional right to authorize the confiscation of the property of German nationals under the Weimar constitution.

It is perfectly obvious that the German Government had no intention of authorizing the confiscation. It merely surrendered to the requirement of the Government of the United States and accorded to the United States the right, which Congress had already taken, to retain the property of German nationals until the German Government made suitable provision for the satisfaction of the demands of American claimants.

But even if the German Republic had had the right to confiscate, and if the treaty of Versailles had authorized confiscation, even if the German Government had intended to authorize confiscation, the German Republic is not competent to modify the Constitution of the United States, nor to modify the social compact of the United States with private persons holding property in the United States, nor to modify nor interfere with the contract relation arising from the executive and legislative pledges of the United States to protect the private property of individuals who are under the safeguard of our laws.

The United States has persistently refused to recognize the existing Government of Russia for many years, on the ground that the Russian Government had systematically violated the sacred principle of the rights of private property, and was undertaking to spread this pernicious doctrine elsewhere. The United States can not afford, itself, to violate this principle.

Hon. A. W. Mellon, Secretary of the Treasury, in his public letter of April 19, 1926, in discussing the question of Germany's action in attempting to make suitable provision for the satisfaction of American claims, as provided under the Knox-Potter resolution and the Berlin treaty, said:

"A creditors' committee investigated Germany's economic capacity and found that 2,500,000,000 gold marks (\$625,000,000) per annum was Germany's entire capacity to meet her treaty obligations. * * * German creditors accepted their committee's recommendation as embodied in the Dawes plan, and by the Paris agreement divided the total annuity among the creditors. The United States signed the Paris agreement, and thereby accepted the Dawes plan. By the Paris agreement the annuity for the payment of the American Mixed Claim was fixed at 45,000,000 gold marks (\$11,000,000)."

The German Republic therefore has made suitable provision for the satisfaction of the American claims, unless it is held that where Germany has paid to the utmost of her capacity, such provision is still not "suitable." Such an interpretation of the Berlin treaty is unreasonable. The purpose of the Knox-Potter resolution was to put pressure to bear on Germany and compel Germany to do her utmost to pay these claims. Germany has done her utmost and her utmost has been fixed by the entente allies and accepted by the United States. If this be not "suitable provision," the term is a mockery.

CONGRESSIONAL ACTION UNDER THE TRADING WITH THE ENEMY ACT

The Congress of the United States under the trading with the enemy act has released all of the property held by many of the persons whose property was held by the Alien Property Custodian, even where such persons have had their property taken over lawfully under said act by the Alien Property Custodian. The property of all persons, German alien property owners, who by the operation of the Versailles treaty had become citizens of other newly erected nations, or had become citizens of other governments under the treaty of Versailles, such as the German citizens who have been residents of Schleswig-Holstein, or of Alsace and Lorraine, or who had become citizens of Belgium when Eupen and Malmedy were attached to Belgium; or of German citizens who had become citizens of Czechoslovakia, or had become citizens of Poland, as in Dantzig and the Dantzig Corridor, and in other portions of eastern Germany attached to Poland; or who had become citizens of Jugoslavia; showing that Congress had no intention to confiscate this property, and had actually released all of the holdings belonging to thousands of former German citizens who came within certain categories.

Moreover, the House of Representatives passed the Winslow bill on February 23, 1923, by a vote of 300 to 11, directing the return of all German alien property to German owners up to an amount of \$10,000, showing that with regard to such persons Congress did not intend to confiscate their property but ordered it returned.

It is incredible that Congress intended to confiscate the property remaining after such action of Congress in ordering the full return to innumerable individuals as above set forth. The reason for retaining any portion of the property was obviously in the interest and for the benefit of the American claimants whose advocates naturally desired to have these claims settled before the claims of all the German nationals had been finally disposed of. It was in deference to their wishes that a portion of the property was still retained and, due to a parliamentary compromise, which enabled a partial settlement to be made at that time with the smaller owners.

THE AMERICAN CLAIMS AGAINST THE GERMAN REPUBLIC

The question arises—what course should Congress take in regard to the American claims against the German Republic.

During the last session of Congress the Secretary of the Treasury, Hon. A. W. Mellon, with the approval of the President of the United States (hearings), proposed that the United States should finance the American claims and be reimbursed such advances by Germany out of 100,000,000 gold marks payable annually, using \$30,000,000 of accumulated interest which had been obtained on German alien property funds, but not allocated. The use of this interest was agreed to by the representatives of the German owners of the alien property, so that by this settlement the American claimants would not be compelled to wait for a period so long as to be destructive of their rights, and so that the return of the German alien property might be immediately made without the objection of those who feel that the German alien property should be retained until the American claims were liquidated.

The objection was made that to use the credits of the Treasury of the United States to liquidate the American claims would be unjust to the Treasury because in the event that the German Government should default in making the payments pledged by the German Government to the United States it would inflict a possible loss on the Treasury which would be against the interest of the taxpayers of the United States.

The matter was somewhat strongly put by saying it was equivalent to Treasury money paying German debts. These objections deserve a careful consideration.

The amount of the indebtedness of the German Republic to the United States on account of the Army of Occupation costs is \$250,000,000, without interest. The amount which would be due to the American claimants and the United States, less the amounts available, would be approximately \$200,000,000, making a total of \$450,00,000, less credits and cross-entries of \$100,000,000 or more, to be liquidated by the payment of \$23,820,000 (100,000,000 gold marks) per annum.

The Treasury can obtain this money due to liquidate the American claims for approximately 8½ per cent. The United States is committed not to charge interest on the Army occupation cost, so that the liquidation under the plan of paying the United States 100,000,000 gold marks per annum would liquidate the fund within a reasonable time, unless Germany defaulted.

There is no probability of Germany defaulting this debt, which is peculiarly a debt of honor which the German Government fully recognizes, and Germany is otherwise obliged to pay these debts even if the Dawes Plan were modified. The debt due to the United States by Germany under such an arrangement would amount to a little over 30 cents per capita per annum of the German population for the annual payment of \$23,800,000 per annum. Germany is one of the most thoroughly organized industrial communities in the world.

But the objection still lies against the use of the Treasury fund for payment of American claims—if Germany should default—and it is therefore necessary to inquire further whether or not the financing of the American claims by the Treasury is or is not justified, in view of a possible risk.

Primarily the obligation to pay the American claims rests upon Germany, the German Republic, and is freely acknowledged. But in the contingency of German default we have a right to inquire whether the United States is not obligated as a matter of law, as a matter of sound policy, as a matter of good conscience, to protect the American claims in such event.

THE UNITED STATES IS OBLIGATED TO PROTECT THE AMERICAN CLAIMS

In times of peace a citizen who pays his taxes and supports the law is entitled to the protection in his life and property by his government, and the United States is charged with the duty of meeting the expense of protecting the life and property of the citizen through the processes provided, and private property can not be taken without just compensation. If he is assaulted the Government of the United States goes to the expense of prosecuting those who are guilty of the assault.

But in times of war the citizen must do more than pay his taxes—he must offer his life itself for the protection of his Government. He must pay extraordinary taxes; he must be prepared to subordinate every private interest for the public safety, and a reciprocal obligation arises in times of war with the Government. The Government should protect the citizen to the extent of its power against any injury by the operation of the Government itself.

The Government in time of war declares war for the purpose of protecting the larger interests of all of the people, and if in protecting all of the people by war a citizen is subjected to an extraordinary loss due to this act of the Government in declaring war, or due to the policies laid down by the Government during the war, the losses should not be allowed to fall disproportionately upon the citizens, but should be apportioned upon all of the people in whose interest war or the policies of war were declared.

An American citizen who suffered a great loss in Germany as a result of the declaration of war, or on the sea because of war policies adopted by the Government, is entitled to look to his Government for redress if the German Government, which is primarily responsible, should default in the liquidation of such claim.

The American claimants have a primary claim against Germany but a secondary claim against the United States. If Germany defaults, it is the duty of the American Government to protect its citizens, nevertheless.

This is the exact principle recognized by France in rebuilding the devastated regions—France paid the cost of repairing and rebuilding the destroyed property and looks to Germany to repay; why should the United States be less considerate of its citizens or less just and fair to its own people who have suffered?

The American citizens having property in Germany are under the mutual protection of the German Government and of the American Government by international treaty between Germany and the United States, and also under The Hague Convention, which pledges the citizen safety of private property in war, and if Germany defaults in this obligation, the citizens who relied upon the mutual obligations of Germany and the United States to safeguard their property have a right to look to the United States Government for payment.

THE UNITED STATES AS TRUSTEE

The United States was chargeable with the duty as the representative and trustee of its citizens to see to it that its citizens were protected in their private property rights as against the German Imperial Government and its successor, the German Republic. A private citizen can not safeguard himself against a foreign government; he must rely upon his own government to protect him, and the responsibility of his own government to protect him is perfectly manifest. The United States recognizes this obligation in passing the Knox-Porter resolution and the Berlin treaty, and in the international agreement, establishing the Mixed Arbitral Commission, and in its negotiations obtaining 100,000,000 gold marks with which to liquidate the obligations of the German Republic to the American claimants.

But the United States is not only responsible for the discharge of this duty, but for the discharge of the duty in a competent manner. The United States Government may not by negligence imperil its own citizens' rights without responsibility.

It is a notorious fact that when Germany had quick assets available to pay the army occupation costs, and the American claimants in 1918, 1919, 1920, etc., the United States, by its negligence, failed to collect the amount even of the army occupation costs from the Reparation Commission established by the allied and associated powers. Was not this a grave negligence of the Government of the United States of which the American claimants would be the victims unless now the American Government assumes the responsibility of the loss, if any, from a future possible German default?

The United States, when Germany had quick assets, made no demand on Germany for payments to protect the American claimants, which was its bounden duty to do. Since, therefore, the United States by its negligence has put the American claimants in danger of the possibility of loss in the event that the German Republic might default, the United States, chargeable with the duty of protecting its own citizens against its own negligence in this matter, should take the risk, if any there be, of German default.

THE PARIS AGREEMENT

The United States having by its negligence failed to secure the assets necessary to meet the army occupation costs, and the amounts due the American claimants, went to Paris, January 24, 1925, when the Dawes plan was adopted, six years after the armistice, and demanded a participation at that belated date, and obtained from the allied powers the agreement that the United States should have 55,000,000 gold marks as first lien for the protection of the army occupation costs, and second, 45,000,000 marks out of the Dawes reparation fund, after certain primary charges had been made, including the 55,000,000 gold marks. In other words, the United States, acting as representative of the American claimants, obtained a first lien for itself, and a second lien for the benefit of the cestui que trust—the American claimants.

It should be clear that the United States, as trustee, according to the principles, practices, and underlying reasons of the law of equity, should not take advantage of the American claimants in this manner by giving itself preferential treatment. Moreover, the United States obtained the 100,000,000 gold marks on the ground, as stated by its representative in Paris, that the United States had no other means available for meeting these charges. It was perfectly clear that under the Constitution of the United States, the executive and legislative pledges of the United States, that the German alien property could not be confiscated and used as a means of meeting the army occupation costs or pay the American claimants. Having on this ground obtained the 100,000,000 gold marks under the Dawes plan, the United States in effect confessed that the American claimants had no security in the alien property in the hands of the United States. This implied confession that the alien property was not a security leaves the Government all the more responsible.

If the Government attempted to confiscate the German alien property it would lose the right to retain the 100,000,000 gold marks per annum, which it got allowed at Paris on the representation that the alien property was not available.

For this reason, since the United States can not plead the right to confiscate the German alien property as a means of meeting the American claims, the United States, as a matter of common fairness, should recognize its duty to give the American claimants the position of preferred creditors against the 100,000,000 gold marks, finance them, and take the possible risk, if any, of having Germany default.

This policy is a wise policy from a national standpoint, because it is of grave importance that the citizens of the United States should be able to rely upon their Government to protect them in the event of war against the consequences the governmental acts or governmental policies. The strength of the Government of the United States is based upon the devotion of its citizens, and the attachment of the citizens to the Government must depend upon the Government giving full protection to the citizen in his just rights.

For these reasons the United States should, as a matter of right, as a matter of good conscience, as a matter of sound policy, take the risk, if any, of Germany defaulting. The actions of the Government of the United States in protecting its citizens against the contingencies of war are shown by many instances during the war where the Government organized special instrumentalities for the protection of the citizen against the extraordinary demands of war, such as the War Finance Board, where the Government used its credits on a huge scale to protect the citizens against the injuries which war otherwise would have inflicted; where the Government, for instance, used its own credit to the extent of \$200,000,000 to finance loans through the Farm Loan Banks to the farmers of the Nation. The Government is now spending \$500,000,000 per annum for the protection and restoration of citizens injured by war (through the Veterans' Bureau). It set up machinery for personal insurance during the war for citizens who enlisted under the colors; it pro-

vided pensions for them. It set up marine insurance for the protection of its citizens when the American insurance companies were unable or unwilling to bear the risk of marine insurance.

It is of great importance that the policy laid down in the Berlin treaty of restoring friendly relations between the German people and the American people should be carried out by liquidating all of these unsettled claims of German nationals and of American nationals.

The settlement of these claims would release a very large volume of frozen credits, which would immediately flow into the channels of industry, of commerce, of finance. A very large part of these funds would be invested in American cotton, cottonseed oil, petroleum and its by-products, in metals, agricultural products, manufactured products, and the United States would be the beneficiary of increased revenue, of increased commerce passing through our ports, and from internal revenue.

The premises considered, we respectfully submit that a sound national policy justifies the immediate return of the German alien property and the liquidation of the American claims.

ROBERT L. OWEN.

ST. GREGORY'S CATHOLIC CHURCH,
Marysville, Kans., December 20, 1926.

Hon. CHARLES CURTIS,
Senate Office Building, Washington, D. C.

My DEAR SENATOR: I have sustained a loss of about \$1,500 because the German Government confiscated my property. It was acquired before the outbreak of the war between the United States and Germany and came under the control of the German Government because of its war legislation and was not restored to me until after the war was over when it was practically worthless.

Bills in Congress relative to payment of awards by the Mixed Claims Commission and return of German property have a provision in them amending subsection E of section 9 of the trading with the enemy act which provides a remedy in favor of American citizens to whom debts were owing by German debtors on October 6, 1917.

Bills now pending in Congress provide that notice of application by a creditor must be given before the passage of such bills. They should be amended so as to define the liability of German debtors under the above provisions of the trading with the enemy act. Ex-Secretary of State Hughes and Hon. John W. Davis have cases pending in the United States Supreme Court in which they both contend that German debtors must pay their American creditors according to the pre-war rate of exchange, and not in worthless mark currency.

When Congress enacted the Winslow Act it gave a remedy to American creditors, but failed to define the rate of exchange in which debts should be paid. Due to this inadvertence, considerable litigation is now pending, and it seems to me that Congress should eliminate this difficulty as it has done in many other instances involving an unfavorable interpretation of the trading with the enemy act.

The CHAIRMAN. Is there anything else?

Senator CURTIS. I have some letters that I should like to make a part of the record.

The CHAIRMAN. That may be done.

(The letters furnished by Senator Curtis are here made a part of the record, as follows:)

Congress has enacted amendments to the trading with the enemy act permitting persons to recover their property taken over by the Alien Property Custodian, and occasion now arises for taking some action to protect our own citizens.

Surely Congress does not intend to permit German debtors to escape liability in paying their American creditors through the use of worthless mark paper. German debtors now insist under the provisions of the Winslow Act upon profiting at the expense of American citizens because of the debasement of mark currency.

I respectfully suggest the following amendment be incorporated in a bill by Congress:

"Nor in any event shall a debt be allowed under this section unless it was owing to and not due or due and not paid in full and owned by the claimant prior to October 6, 1917. That such debt is to be paid according to exchange with Germany existing at the time it was contracted by a person not an enemy or an ally of an enemy. That the computing of exchange is to be determined by the figures of the Treasury Department in fixing the conversion of the rate of marks into dollars for revenue purposes."

The adoption of the above amendment will serve to accord the same measure of equity and justice to American creditors of Germany and its nationals as that which is given to Germans in the matter of the restoration of their property.

Please do not be confused over the decisions of the Mixed Claims Commission regarding American property located in Germany, as such decisions are based upon actual seizures of American property by the German Government. That Government took good care not to actually seize much American property, because it has more at stake in the matter of sequestration of American property without actually taking it over by enacting laws which prohibited Americans from taking their property out of Germany and prevented the payment of debts owing by the Government of Germany and its nationals.

If we are going to restore that which our Government took from Germany and compensate them for their property, I believe the same measure of equity and justice should be meted out to American citizens whose property, rights, and interests were confiscated by reason of Germany's war legislation.

Germany enacted measures of economic retaliation against the property of American citizens located in Germany, and its war legislation prohibited me from either disposing of my property or taking it out of Germany until after the war was over.

I understand that some of the German property taken over by our Government represents dollar loans obtained from American citizens who were to receive payment of their loans in marks from their German debtors. Marks at the time the loans were contracted were equal to 23.8 cents in our money. It is not fair to turn over the dollars to the borrower and let the American creditor suffer the loss.

The Secretary of the Treasury ruled that the Alien Property Custodian was entitled to recover payment of debts owing to German creditors in marks from American debtors on the basis of 18 cents per mark. It is certainly not justice for Germans to collect their debts on such a basis and then be allowed to pay their American creditors in worthless currency.

If the French Government, which has not seen fit to return German property, has granted a right of recovery to its nationals whose property was effected by Germany's war measures similar to the way mine was, I believe it is only right that our own Government should protect the interests of its citizens.

Will you kindly urge some member of the committee which is considering this matter to give this attention to preserving the equities of American creditors in the property of Germans at the time it was taken over by the Alien Property Custodian.

I understand the Alien Property Custodian has recommended remedial legislation by Congress in the form of the amendment above referred to, and I trust you will vote in favor of it.

Very truly yours,

Rev. AUGUST REDEKER.

MARYSVILLE, KANS., January 6, 1927.

Hon. CHARLES CURTIS,

Senate Office Building, Washington, D. C.

MY DEAR SENATOR CURTIS: Receipt is acknowledged of your letter of the 24th ultimo for which I thank you.

I have filed a claim for my losses which is in duplicate form, one having been filed with the Department of State and the other with the Alien Property Custodian. My claim is based upon the sequestration of my securities by the German Government during the war period but has not been allowed.

I would like to call to your attention the great injustice that has been done thousands of our citizens which would not have occurred had Senator Underwood's plan been adopted by the Senate several years ago which provided for the creation of a commission to adjudicate the claims of American citizens against Germany.

During the Sixty-seventh Congress, second session, Senator Underwood introduced S. 3852, a bill to amend an act entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes." On July 27, 1922, the Committee on the Judiciary held hearings, and on page 12 thereof, the following appears:

"Senator CUMMINS. What would you do with the case of a claim of an American citizen against Germany for seizure in Germany of the individual property of the American citizen? Now, I am told that Germany offers to pay back—offers to pay American citizens their claims. But they seized the property when the mark was worth, we will say 20 cents, and they want to pay it back in a mark that is not worth 1 cent. Would the failure on the part of the German Government to make honest returns for the property so seized be a claim against the German Government that we could try in an American court?

"Mr. PALMER. Yes, sir; it is expressly 'nominated in the bond.'

"Senator CUMMINS. What is that?

"Mr. PALMER. I say it is expressly so 'nominated in the bond.' It is in the treaty, just that way. Germany agreed not merely to pay the claim of the American citizen whose property was taken by Germany under a law similar to ours but Germany agreed to restore the property, and 'restore' means to put the American citizen back in the position he was in when Germany took the property."

Hon. A. Mitchell Palmer's testimony approved of Senator Underwood's bill and gave all of its provisions very serious consideration. It was his judgment that American owners of bonds which were sequestered by Germany would have recovered their losses.

One of the largest single categories of damages filed by American citizens against Germany as a consequence of the war covered American-owned securities which the German Government prevented American citizens from either disposing of or collecting what was owed to them. These securities were in Germany and were acquired before the war, representing a value in excess of \$67,000,000 according to Senate Document No. 419, Sixty-sixth Congress, third session, pages 8 and 9. I understand that the amount of awards made by the Mixed Claims Commission upon the principal of bonds which were sequestered by the German Government amounts to less than \$100,000.

The Senate should know the total amount of awards made by the Mixed Claims Commission upon the principal of bonds for which claims were filed by our people and you undoubtedly will be amazed at the small amount. When you consider that the proceeds of the bonds have been used by German debtors to increase their property holdings the replacement value of which is far greater to-day compared to the time when the bonds were sold before the war, you will appreciate the great profit of the German Government's war regulations.

As an example, we take the case of A, a German national who issued bonds payable in marks and sold them in 1910 to B, an American citizen residing in the United States. The proceeds of the bonds were used by A to increase his property holdings in the United States. B left his bonds upon deposit with a bank in Germany so that the coupons could be presented to the main office of the debtor, A. On August 9, 1917, the German Government sequestered B's bonds. Later, when our trading with the enemy act was passed, the custodian seized A's property in the United States. A's property was partially created out of proceeds of the bonds sold to B. Now, under the provisions of the bill which passed the House, B can not recover the debt owing to him by A and the result is that A will get his property returned to him and make a handsome profit at B's expense, because the marks in which the debt was owing have become worthless.

However, before marks became worthless, "B" was prevented from realizing upon his bonds because of Germany's war orders which tied up the bonds in such a way that "B" could not dispose of them when marks were of value.

These American creditors of German debtors should have their rights and remedies protected in the fullest measure by our Senate. To permit German debtors to borrow money from our nationals and have the evidences of such indebtedness sequestered by the German Government without holding the Government of Germany liable would certainly be most inconsistent with our policy of the inviolability of private property, especially as we are going to

compensate German nationals for ships, radio stations and patents according to the value at the time we took them over.

I can not conceive of our Senate adopting so liberal a policy with reference to our late enemies and cast aside the appeals of our own citizens for the application of the same policy to their own cases.

Mr. Mills, who sponsored the bill in the House of Representatives, said that an American citizen could recover 16 cents upon these securities in the event that it could be proven that the claimant was unable to remove his bonds because of the war regulations of the German Government. I want you to know that this is not so, because that fact has been proven that Germany's war orders of "Measures of economic retaliation against the United States" prohibited American citizens from either removing their bonds or selling them, and is borne out by the report of the Ways and Means Committee on page 7, and I now quote from its report:

CLAIMS OF AMERICAN NATIONALS

"During the war the German Government seized and sequestered property of American citizens in Germany. Moreover, even prior to our formal entrance into the war, war regulations of the German Government made it impossible for our citizens to withdraw much of their property from Germany, more specifically bank deposits and securities."

The Mixed Claims Commission, created by an Executive agreement not approved by the United States Senate, containing an unreasonable limitation of time in which to file claims, which was set forth at six months, has frozen out every American owner of bonds which were sequestered by the German Government. You will hear a great deal about the difference between tweedledum and tweedledee from the commission as to how this happened, but I believe the matter should be fully investigated by your committee. However, this agreement was ratified by the German Reichstag in 1922.

Please bear in mind that Germany did not actually seize much American property. It accomplished that purpose in another way by enacting war legislation which prohibited American citizens from disposing of their securities in Germany, which was an indirect method of sequestration.

Senator Copeland has introduced an amendment to the alien property bill which has been referred to the Committee on Finance. This amendment provides that the Government of Germany shall be liable for the sequestration of American-owned securities which came under the control of the German Government during the war period.

As the foreign policies of our Government are to a large extent defined by our Senate, as evidenced by our treaties with foreign governments. I do not believe it was the intention of the United States Senate, when it ratified the treaty of Berlin, to permit the Government of Germany to sequester American-owned securities and profit thereby at our expense.

Senator Lodge made a brief statement in the Senate, September 24, 1921, regarding the treaty of peace which President Harding had negotiated with Germany, in which he said:

"It was necessary in making this treaty to make it in such a way that it would conform to the resolution passed by the Congress, and that was a work of no little difficulty. The resolution was general in its terms, elaborate in regard to the protection of claims of citizens of the United States, and stated broadly that we should insist on reserving all rights and advantages that came under the treaty of Versailles, whatever they might be.

"We are not limited by the Versailles treaty as to the character of claims for damages; we can make any claims we like."

Senator Kellogg, in discussing the treaty of peace in the Senate, September 28, 1921, said:

"Another provision of the treaty for peace for our benefit, as well as the benefit of the other allied powers, is the settlement of debts owing from German nationals to American nationals."

I am transmitting to you a copy of a letter by Zimmermann & Forshay, which contains a clear exposition of the manner in which Germany sequestered American-owned securities.

Respectfully yours,

Rev. AUGUST REDEKER.

LETTER FROM ZIMMERMANN & FOSSHAY, NEW YORK

NOVEMBER 12, 1926.

Hon. WILLIAM R. GREEN,

*Chairman Committee on Ways and Means,
House of Representatives, Washington, D. C.*

MY DEAR CONGRESSMAN: At the request of some of your constituents who were customers of our firm long before the United States declared war against Germany, and who had property over there which became practically worthless by reason of the war, I submit the following for your consideration.

During our 50 years of international banking, chiefly in German securities since 1872, we developed amongst the residents of the United States a large clientele numbering over 10,000 persons who had acquired German securities through our firm for which they had paid in excess of \$5,000,000 before we entered the World War.

Some of these German securities were issued before we began business in 1872, and others from that time on which included various issues of the German Government, its States and municipalities, industries, and banks.

Many of these American-owned securities remained upon deposit with various banks located in Germany, and at the time of our declaration of war against Germany, April 6, 1917, there were upon deposit in the Deutsche Bank, Berlin, Germany, 20,877,400 marks of such securities with a pre-war value of about \$5,000,000, the property of our customers living in the United States.

Soon after we declared war against Germany, that government began taking, on August 9, 1917, economic measures against American-owned property located in Germany. Such measures were vigorously enforced against that property and they were made most effective by an order of the Imperial Chancellor of November 10, 1917, entitled "Economic measures of retaliation against the United States of America."

The order of retaliation provided that all American-owned property in Germany was to be reported to the German alien property custodian, that no debts owing to residents of the United States should be paid, and furthermore that no securities were to be exempted from the effects of this order.

Soon after the signing of the armistice my firm requested the Department of State to ascertain the status of our customers' securities which were being withheld from them through the act of the Government of Germany. I learned that the German alien property custodian had subjected to his measures of administration the 20,877,400 marks of securities owned by American residents, and that the Deutsche Bank had reported these securities to the German custodian as the property of our firm's customers in the United States.

On February 3, 1919, my firm filed with the American Alien Property Custodian notice of claim in behalf of our customers against the property of the Deutsche Bank, which was held by the American custodian. This claim was filed in accordance with the provisions of section 9 of the trading with the enemy act, which provided for the payment of debts out of the property of the debtor. A list was transmitted to the custodian disclosing the names and addresses of about 7,000 American residents, whose securities in the amount of 20,877,400 marks were being withheld from them in Germany.

One of the members of my firm conferred with the officials of the Department of State about his going to Germany to recover our customers' property, and about the time he was ready to make the trip the War Trade Board, on July 14, 1919, pointed out that correspondence could be had with Germany. My firm then sent a cable to the Deutsche Bank demanding the possession of our customers' property. The bank replied that it could not comply with our request.

A few months later I arrived in Germany for the sole purpose of getting the securities. I conferred with the officials of the Deutsche Bank, Berlin, and was informed that the 20,877,400 marks of American-owned securities had been reported to the German alien property custodian, and they had been placed under that German official's control. I was told that the securities would not be released until the German custodian had given his permission.

After spending some time in Germany in conferring with the officials of the German custodian's office and the Deutsche Bank, I was able to secure the release of the securities from the control of the German Government. In the meantime the mark currency in which the securities were payable had

depreciated to the point where it was only worth a few cents. Please bear in mind that the securities were bought before the war, paid for on the basis of the pre-war rate of exchange in dollars.

Several years ago my firm brought suit against the Deutsche Bank with respect to our own individual claim, and the German orders entitled "Measures of economic retaliation against the United States" were submitted in the form of exhibits by the defendant. A defense witness testified that the orders had been certified to by the German Embassy at Washington as being true and correct.

In a sworn affidavit executed by the Deutsche Bank, signed by an official thereof, the original of which is in possession of the German agent associated with the Mixed Claims Commission, reference is made to our customers' bonds being under the control of the German Government, and I now quote from the affidavit:

"That after their release by the Treuhander the bonds were delivered."

The Treuhander referred to is the official designation of the German alien property custodian.

My purpose in writing to you is to assist my customers in recovering the losses they have sustained. It seems that only about a dozen of them gave notice of their losses under the agreement of 1922 creating the Mixed Claims Commission. However, notice of all their claims covering 7,000 customers was given to the American Alien Property Custodian on February 3, 1919, more than three and one-half years before the commission was created.

Those whose cases are pending before the commission are offered two and a fraction cents per mark by the German agent in settlement of their claims. The great bulk of the cases are outside the jurisdiction of the commission because notice of their claims was not filed in time with that commission, but as I have stated, they had all been filed with the American Alien Property Custodian long before the commission existed.

The Mixed Claims Commission on May 7, 1925, prescribed the rules covering the character of proof required to obtain a recovery of 16 cents per mark with respect to American-owned securities located in Germany during the war period. These rules provide that the burden of proof is on the American claimant to show that from all the facts and circumstances in reference to the purchase of the bonds it could be demonstrated that they would have withdrawn their bonds from Germany except for that exceptional war measure on the part of Germany.

I understand that out of the thousands of American owners of German Government securities purchased before we entered the war that in only two or three cases has the Mixed Claims Commission allowed a recovery of 16 cents per mark upon the principal of the loan.

No such character of proof is required by those whose claims have been allowed covering deposits of mark currency in German banks. It seems so unfortunate for these thousands of American residents, owners of German securities, that they could not recover their loans by merely submitting the same measure of proof as is provided for in bank deposits of mark currency.

It appears that the Mixed Claims Commission lacks due legislative authority to provide for the return of the money borrowed from American citizens before the outbreak of the war by the Government of Germany and its nationals. The American holders of German securities therefore must have recourse against their German debtors under the provisions of the trading with the enemy act. According to section 9 of that act it is provided that debts owing before and on October 6, 1917, are to be paid out of the debtors' property in the possession of the Alien Property Custodian.

A right has been given by Congress to American creditors, but the remedy is not complete because of the lack of legislation defining the rate of exchange in which mark debts should be paid. On August 17, 1926, the Alien Property Custodian, Senator Sutherland, addressed a letter to Chairman Porter of the House Committee on Foreign Affairs, in which the custodian said, in part:

"I have much sympathy for those of our people who suffered from the debasement of the mark currency, and should be glad if it were possible to frame some legislation that would assure settlement of such claims on the valuation of the mark as of date of contract. In so far as the proposed amendment serves to accomplish this purpose I feel that it is commendable."

I want you to know that many of these American owners of German securities are of an elderly age now and have become to a certain extent dependent

upon their relatives. Many of them call upon me frequently and tell me a pitiful story of the hardships they have suffered by reason of the German Government having repudiated the loans which it borrowed that represented the life savings of the owners of these securities.

I will appreciate very much having this letter inserted in the records of the hearings relative to the payment of awards by the Mixed Claims Commission and return of German property.

Very truly yours,

LEOPOLD ZIMMERMANN.

The CHAIRMAN. The committee will now stand adjourned to meet again Monday morning at 10 o'clock on S. 5358, a bill to amend the World War adjusted compensation act.

(Whereupon, at 12 o'clock noon, the committee adjourned to meet on Monday, January 24, 1927, at 10 o'clock a. m.)