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AMERICAN CLAIMS AND GERMAN REPARATIONS

By

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PRESENTED BY MR. SMOOT

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IN THE SENATE OF THE UNITED STATES,
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Resolved, That the article entitled "American Claims and German Reparations" be printed as a Senate document.

Attest:

GEORGE A. SANDERSON, *Secretary.*

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When Secretary of State Hughes by his timely appearance abroad last summer saved the London conference from wreck, he not only saved the day for the allied Governments and Germany but also measurably improved the situation of the United States and thousands of American nationals holding claims against Germany.

It is altogether a misconception that the United States is not interested in the success or failure of the Dawes reparations plan. As a matter of fact, if, as is most likely, S. Parker Gilbert, the agent general for reparations payments, and his associates are successful in executing this plan as mapped out, the United States will profit materially with her war-time Allies, even though the American lawyers and financiers now engaged upon this gigantic task of reconstruction are merely unofficial representatives of the United States.

WILL THE ALLIED DEBTS BE PAID FROM REPARATIONS?

Our Government's cost of maintaining American troops along the Rhine after the armistice, amounting to $255,544,810.53, as stated January 31, 1923, is perhaps the item most frequently identified by Americans with the reparations problem. And this popular notion is due largely to the conference held last year in Paris between Eliot Wadsworth, Assistant Secretary of the Treasury, and the representatives of the other allied Governments, at which it was agreed that this claim should be adjusted out of reparations payments. This is a comparatively small part of the aggregate claim which the United States is putting forward for payment by Germany.

If the reparations machinery now set up accomplishes its purpose it is quite possible that the war debts owing to the United States by England, France, Italy, Belgium, and the smaller debtor nations will be eventually liquidated out of German reparations payments, thus presenting the anomalous situation of Germany furnishing Europe the funds necessary to defray about 80 per cent of the debts owing America by her war-time Allies, just as this country in 1917 and 1918 supplemented her man power by financing the Allies to win the war.

OUR OWN CLAIMS AGAINST GERMANY

Of more vital interest to Americans generally, however, is the effect, if any, which German's reparations payments will have upon the ultimate disposition of the American claims against Germany being adjudicated by the Mixed Claims Commission, United States and Germany, now sitting in Washington, which was created under the executive agreement entered into between the United States

and Germany on August 10, 1922, with full powers to determine Germany's liability and the measure of damages involved in each claim.

No provision was or has yet been made for the financial satisfaction of these so-called American reparations claims. It was understood that some definite arrangement would subsequently be made providing ways and means of payment. And in this connection it should be noted that under the Knox-Porter peace resolution, which was adopted as a part of the treaty of Berlin, the former enemy property seized during the war by the Alien Property Custodian is specifically set apart as security, or a pledge, to insure Germany's payment of these claims. Indeed, even the actual use of this property as a fund out of which to pay the claims has been frequently advocated but so far not deliberately considered by Congress, which is, under the law, the only power to say what shall be done with the property thus sequestrated. So until the London conference put the Dawes plan into operation many American claimants despaired of ever being paid.

AWARDS IN THE "LUSITANIA" AND OTHER CLAIMS

It is to Germany's reparations payments under the Dawes plan that many Americans with claims against Germany are, therefore, now turning with hopes for funds to pay their claims. America's peculiar interest in German reparations, which has heretofore been generally regarded as a distinctly European problem, has been stimulated largely on account of the awards announced from time to time during the past year by the Mixed Claims Commission, particularly with respect to claims for loss of life or personal injuries arising out of such affairs as the sinking of the *Lusitania* on May 7, 1915.

Besides the awards in the *Lusitania* cases, aggregating to October 5, 1924, $1,267,803.70, which have, perhaps, been the most sacred trust of the Department of State, the commission has since its organization two years ago entered awards totaling nearly $82,903,678.69, and dismissed several thousand cases ill-grounded on legal principles, thus disposing in principle of about 6,000 out of the more than 12,000 claims on file. These dispositions include settlements of claims based on loss of life, personal injuries, and the loss of hulls and cargoes through Germany's submarine warfare, debts, sequestrations, requisitions, insurance, American interests in German estates, and claims of prisoners of war, as well as the so-called *Lusitania* claims.

BOUND BY THE TREATY OF BERLIN

Of the more than 12,000 claims originally filed with the American agency for presentation to the commission, in which the total amount demanded was $1,479,064,313.92, the commission has already peremptorily dismissed 3,190 claims seeking reimbursement of war-risk insurance premiums paid by American shippers during the war for insurance against losses which never occurred in the total amount of over $345,000,000, on the grounds that they are not losses within the legal contemplation nor within the intendment of the treaty of Berlin, which is the commission's charter.

In its adjudications the commission is controlled by the treaty of Berlin. It is not cencerned with the treaty of Versailles as such, but only with those provisions thereof which have been incorporated into the treaty of Berlin. And when the treaty of Berlin is inapplicable in arriving at the measure of damages, the commission resorts to international conventions, international custom, rules of law common to the United States and Germany, the general principles of law recognized by civilized nations, judicial decisions, and the teachings of the most highly qualified publicists as subsidiary means for the determination of rules and doctrines of law. In the absence of these definite guideposts the commission will not be bound by any particular code or rules of law, but by justice, equity, and good faith.

UNCLE SAM THE REAL CLAIMANT

The main question in all international arbitrations is predicated upon the citizenship of the respective claimants. In this connection the commission has ruled that although the United States Government is conducting this proceeding on behalf of its nationals who have been injured or damaged by acts attributable to Germany or her agents, the American Government is nevertheless the real party in interest. For this reason the claims presented to the commission are asserted and controlled by the United States as the actual claimant, either on its own behalf or on behalf of one or more of its nationals.

Without reference to any particular claim, the commission in laying down some fundamental rules governing the tribunal's powers and limitations has decided that "In order to bring a claim (other than a Government claim) within the jurisdiction of this commission, the loss must have been suffered by an American national, and the claim for such loss must have since continued in American ownership." And by way of explanation the commission points out that the United States, which is the claimant in all these individual suits, must have been injured directly, or on account of injury to one of its nationals and that it was not so injured if the injured person seeking redress "was at the time of suffering the injury a citizen of another state."

GREATEST ARBITRATION OF HISTORY

Thus actuated in the work of this tremendous arbitration, which is by far the greatest in the history of the world, the Mixed Claims Commission has far exceeded the record made by all similar proceedings to which the United States has been a party. This remarkable achievement can only be appreciated when it is recalled that during the 120 years before the outbreak of the World War the United States was a party to 71 distinct and completed international arbitrations with 24 different nations involving pecuniary demands of all kinds. The awards entered of record in these 71 arbitrations aggregated less than $93,000,000, the largest settlement of all being the so-called Geneva award in favor of the United States amounting to $15,500,000. And this single proceeding, known as the famous Alabama arbitration, alone required about five years to settle 1,701 claims, including 448 for war-risk insurance premiums which were summarily rejected.

President Coolidge in his annual message to Congress made special reference to America's claims against Germany, thus focusing the attention of the country on the commission now sitting in judgment upon them.

AN AMERICAN CHOSEN AS ARBITER

It is particularly noteworthy that the organization of this tribunal by the United States and Germany marks the first instance in America's long calendar of arbitral proceedings with other nations in which an American was selected upon the suggestion of the opposing nation to serve as umpire of the tribunal. Neither is it of record that such a distinct compliment of unstinted confidence in the integrity of any nation has ever before been so emphasized in any similar action. And it is particularly striking in that the commission is entertaining claims only of the United States and her nationals against Germany. To return this great compliment the United States, with the entire approval of Germany, selected the late William R. Day, who at that time was one of the ablest and most experienced members of the Supreme Court of the United States, to preside over the commission as umpire. Judge Edwin B. Parker, of Texas and New York, one of America's foremost lawyers, who was priorities commissioner on the War Industries Board during the war and later chairman of the United States Liquidation Commission which went to Europe following the war and settled some $1,600,000,000 in claims, accepted the appointment as American commissioner. Germany also sent to Washington one of her ablest specialists in international law in the person of Dr. Wilhelm Kiesselbach, of Hamburg, who serves as German commissioner.

Upon the resignation of the venerable Justice Day shortly before his death last year, the two Governments decided to promote Judge Parker, the American commissioner, to the vacant position of final arbiter in recognition of his pronounced abilities and his fairness as the American member of the commission. Judge Parker was succeeded by Chandler P. Anderson, of Washington and New York, whose varied experiences in connection with several important international commissions and tribunals during the past 20 years have made him a valuable addition to this dignified tribunal.

The United States is represented before the commission by its agent, Robert W. Bonynge, a well-known New York lawyer and former Member of Congress from Colorado, who served for some years on the United States Monetary Commission, and he is assisted by a staff of attorneys, with H. H. Martin, of Washington, as chief counsel. The German agent and chief counsel is Dr. Karl von Lewinski, who is perhaps his country's best known authority on the treaty of Versailles.

REDUCTION IN AGGREGATE OF CLAIMS

In the settlement of the claims in question the commission is governed entirely by judicial, not arbitrary, administrative means. Each claim has its day in court and under the rules announced by the commission is adjudicated; that is to say, disposed of by a decision based on sound legal principles. The tribunal is, therefore, not merely a fact-finding body but is an international court of law

and justice passing upon the merits of each individual case in the numerous groups of claims coming within the purview of the treaty of Berlin. These well-reasoned decisions touch upon nearly every branch of municipal and international law, and are distinct contributions to international law.

In accordance with the decisions and opinions handed down by the umpire, Judge Parker, and the commission, paving the way as they do for the disposition of various groups of claims which the Government of the United States has given into the charge of the American agent with a view of presentation to the commission for determination, Mr. Bonynge and his staff of counsel have been able to file with the commission more than 4,000 claims upon which the commission has either entered an award or ordered a dismissal. Included in these cases are practically all of the 3,190 claims seeking reimbursement for war-risk insurance premiums paid during the war, which the commission, through Umpire Parker, ordered dismissed as not coming within the category of losses prescribed for compensation by the treaty of Berlin. By this sweeping decision the total amount claimed was cut from the original tentative demand of $1,479,064,313.92, which represented the aggregate amount of the more than 12,000 claims filed with the American agency, down to approximately $1,133,641,517.75. America's claim for the cost of maintaining American troops in the Army of Occupation along the Rhine is, however, still included in this figure.

By reason of their ability and willingness to cooperate in the satisfactory settlement of these classes of claims, Mr. Bonynge and Doctor von Lewinski have succeeded in arriving at agreements relative to more than 600 claims. With the rules and principles announced by the commission as a basis, the American and German agents have together examined hundreds of claims covered by such decisions, and after reaching proposed settlements have presented jointly signed statements of fact to the commission with their recommendations, and these recommendations have practically all been approved by the commission. In this manner both the American and German agents, while in Berlin this summer examining evidence, were able to agree on the proposed settlement of about 200 of the more complicated claims aggregating nearly $12,000,000.

HOW THE PAYMENTS MAY BE MADE

The matter of paying these claims will undoubtedly be an item which Germany must consider in connection with her reparations payments. Under the Dawes plan Germany will have to pay, in satisfaction of claims accruing from the war, 2,500,000,000 gold marks in each "standard year." The payments will be made from interest on railway bonds and industrial debentures, and from the transport tax and the budget. These figures, however, do not include the proceeds from the sale of capital assets which may be effected by the creditor governments.

As soon as the plan is put into execution the Reparations Commission will be in possession of bonds for 16,000,000,000 marks (11,000,000 railroad bonds and 5,000,000,000 industrial debentures), which may be sold to the extent that financial markets are capable of absorbing them. Subsequently, bonds representing the transport tax

and the contribution from the budget may be issued and will enable the governments to realize the capital of their claims.

To secure satisfaction to the American claimants in whose behalf awards have been and are to be entered by the Mixed Claims Commission, the United States Government could either avail itself of the annual payments due from Germany, which would mean participation in these annuities on a percentage basis, or it could make use of the bonds themselves by either distributing them among the claimants or by issuing its own bonds on the strength of the security represented by the German bonds and debentures.

This new enhancement to the prestige and authority of international jurisprudence, though still in its infancy, is becoming more and more effective as a leaven of honor among nations. And even though a writer and publicist as modern as Pollock, of Oxford, had little faith that "a tribunal of arbitration appointed at this day under a treaty between sovereign states" could compel the rulers of such states "to fulfill its award," the thorough and amazingly expeditious work of the Mixed Claims Commission in the past two years demonstrates to the world that the American principle and practice of arbitration with respect to claims and other disputes between nations is not merely an idle speculation or theory of international dreamers and pacifists. On the contrary, America has repeatedly demonstrated to the world that if properly approached arbitration can be the machinery for the practical working out of every sort of international problem and difficulty because of the solemn sanction which nations concerned give to the observance of settlements thus arrived at.

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