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SENATE

{ REPORT  
{ No. 695

## GEORGIA COTTON CO.

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APRIL 19 (calendar day, APRIL 28), 1926.—Ordered to be printed

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Mr. TRAMMELL, from the Committee on Claims, submitted the following

### REPORT

[To accompany S. 579]

The Committee on Claims, to whom was referred the bill (S. 579) for the relief of the Georgia Cotton Co., having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The bill provides for the payment of \$30,000 to the Georgia Cotton Co., a corporation having its offices and principal place of business at Albany, Ga., in full compensation of all claims of the company for money paid by it to the Alien Property Custodian and for losses sustained by consequences flowing from acts of the Government of the United States during the World War.

The facts are fully set forth in the following memorandum and a letter from the Alien Property Custodian, which are appended hereto and made a part of this report.

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#### BLIJDENSTEIN, OF ROTTERDAM, HOLLAND

The Georgia Cotton Co. is and has been for a number of years engaged in business of buying and selling cotton to foreign markets. At the time of the transaction hereinafter referred to its stockholders consisted of G. C. Mays, who owned 307½ shares; J. S. Billingslea, who owned 342½ shares; and A. Hannay & Co., of Liverpool, England, who owned 350 shares. Mr. Mays and Mr. Billingslea were both native Georgians and were actively interested during the war in numerous Government activities. A. Hannay & Co., cotton importers, have been for many years to a large extent the financial backers of the corporation. It has been the custom of the Georgia Cotton Co. for many years to sell to the foreign trade cotton for future delivery, and this accorded with the general practice among cotton exporters in this country.

H. H. Blijdenstein was a subject of Holland, residing at Rotterdam, and a large trader in American cotton. He had a local office at New Orleans, with resident agents in charge, among these agents being a man by the name of S. Geissler.

On June 12, 1916, while Germany, England, and France were at war, the Georgia Cotton Co., in the usual course of trade, sold H. H. Blijdenstein 2,000 bales of cotton at approximately  $18\frac{1}{4}$  cents per pound, to be delivered "within 45 days after conclusion of peace."

After the declaration by Congress of the existence of a state of war between the United States Government and Germany the price of cotton began rapidly to rise, and the Georgia Cotton Co. opened negotiations with Blijdenstein with a view to canceling the contract. These negotiations resulted in the cancellation and surrender to the Georgia Cotton Co. by Blijdenstein of the contract on January 14, 1918. The Georgia Cotton Co. paid for the cancellation of this contract the sum of \$49,500, evidenced by two checks, one for \$42,000, made payable direct to Blijdenstein, and New York Exchange for \$7,500, payable direct to S. Geissler, who claimed this sum as his commissions on the transaction. The transaction was closed with Geissler, who presented to the Georgia Cotton Co. a blanket power of attorney from Blijdenstein authorizing him to settle upon any terms which might be agreed upon between him and the Georgia Cotton Co. Mr. Billingslea, the then vice president of the Georgia Cotton Co., and now president, himself wrote the receipt, which appears in the file, by which Blijdenstein receipted the Georgia Cotton Co. for only \$42,000, but a perfectly satisfactory explanation of the failure to include the \$7,500 is contained in the affidavit of Mr. Billingslea, which appears in the file. This failure to include the \$7,500 aroused the suspicion of the Government agents that there was something wrong with the transaction; but, as stated, it will be found upon investigation that the explanation made by Mr. Billingslea in reference to this omission is entirely satisfactory. Moreover, the file will show that upon request from the Alien Property Custodian's office the officers of the Georgia Cotton Co. very promptly gave a detailed statement of the whole transaction and in addition to this furnished to the custodian information which he did not have that Blijdenstein had on deposit to his credit, to protect this contract, in the Guaranty Trust Co. of New York, a large sum of money. Some 60 or more days after this settlement was consummated (the exact date is not now available but is in the file in the custodian's office) the War Trade Board published a bulletin forbidding American citizens from trading with H. H. Blijdenstein.

On May 12, 1919, the Alien Property Custodian lodged a formal demand with the Georgia Cotton Co. under the enemy trading act, demanding of the Georgia Cotton Co. "every right, privilege, and benefit which was conferred upon the said H. H. Blijdenstein by the terms of that certain contract or agreement made and entered into by and between the said H. H. Blijdenstein and the Georgia Cotton Co. on or about the 12th day of June, 1916, whereby the said Georgia Cotton Co. undertook to deliver to the order of said H. H. Blijdenstein 2,000 bales of cotton at a stipulated price and under stipulated conditions within 45 days after the conclusion of peace."

The demand was that the Georgia Cotton Co. convey, transfer, assign, and deliver this property to the Alien Property Custodian, to be held by him and administered according to law. It was estimated that a compliance with this demand would either entail the payment by the Georgia Cotton Co. to the Alien Property Custodian of a sum approximating \$150,000, or the delivery to the custodian of the 2,000 bales of cotton called for by the contract. It was not possible for the Georgia Cotton Co. to do either of these things, and it declined to comply with the demand.

Subsequent correspondence with the department resulted in the opening of negotiations between Mr. Mays, the then president of the Georgia Cotton Co., and his attorneys, with special counsel employed by the Government to handle this and some other similar transactions. At the first conference it was pointed out to the attorney for the Georgia Cotton Co. that the mere failure to comply with the demand of the custodian without reference to its legality or justice amounted to a criminal offense under the enemy trading act. It was further pointed out that a civil action could either then or at a later date be brought for a large sum of money. It was then suggested by representatives of the Government that the matter might be compromised. The Georgia Cotton Co. was advised by its attorneys to decline the demand and to decline the payment of any sum by way of compromise.

Mr. Mays, however, representing the Georgia Cotton Co., was confronted with this situation: The country was at fever heat. The financial backers and in part owners of the Georgia Cotton Co. were English importers. A mere charge by the Government of disloyalty on the part of the American representatives of this concern would probably have wrecked it, and it was then in a

prosperous condition. As a practical proposition, therefore, the attorneys of the Georgia Cotton Co. were directed to make the best settlement possible. Before doing this, however, the attorneys interviewed both the custodian and the Attorney General's office, as well as the general counsel of the custodian, in an effort to induce them to withdraw the demand, but were met with the statement that a demand once formally made must take its usual course, and could not be withdrawn.

Finally the attorneys for the Georgia Cotton Co. concluded a settlement with the special counsel for the Government on September 26, 1919, under the terms of which the Georgia Cotton Co. paid to the custodian the sum of \$30,000. The Government attorneys first demanded \$60,000, then \$40,000, and then \$35,000, and finally settled for \$30,000. The Georgia Cotton Co. requested that in the written agreement of settlement it be recited that this money was paid under protest, but to this the Government's attorney would not agree, although counsel for the Georgia Cotton Co. stated repeatedly that the money was being paid under protest and in recognition of the fact that the Georgia Cotton Co. did not legally or morally owe any part of it. However, the Georgia Cotton Co. did insist that the agreement for settlement which was submitted be changed so as to embody certain provisions, as will appear from a letter addressed to the special attorney for the Government on August 5, 1919, a copy of which is attached to this abstract; and, while the original agreement of settlement is not before us our understanding is that these provisions were embodied in it, because our file contains a letter in which the counsel agreed to make the changes.

Some time after this money was paid in settlement of this demand the Georgia Cotton Co. filed with the Alien Property Custodian a claim for refund and asked for a hearing upon the claim. A personal hearing was granted by Mr. Garvan, the then custodian, to the Georgia Cotton Co. and its counsel in the presence of Senator William J. Harris. In this interview the custodian stated in substance that if we had correctly stated the facts, the demand ought not to have been made, but, as we recall it, that he did not feel he had the authority to refund the money on an ex parte hearing. It was then suggested to him by counsel for the Georgia Cotton Co. that if he would waive the defense of accord and satisfaction and let the claim stand upon its merits, the Georgia Cotton Co. would institute suit in the District Court of the United States for the Southern District of Georgia to recover the money, as was authorized by the enemy trading act. The custodian readily agreed to this, stating that the Government ought not to retain money of one of its citizens, which in equity and good conscience it was not entitled to hold, and that in such a situation as was presented the Government ought not to insist upon the technical defense of accord and satisfaction.

The representative and attorney for the Georgia Cotton Co. returned home prepared to bring suit, in accordance with this understanding, but a few days later received a letter from the general counsel for the custodian, stating that he could not waive the Government's right to make this defense, because to do so would probably subject him to liability on his bond to the Government. In this situation there was, of course, no redress left in the courts, and nothing to do except to withdraw the demand for refund, which was done upon request of the Government's attorneys.

It is our information, though we have no record of it, that the Government withdrew Blijdenstein's name from the enemy trading list, and thereby admitted that it was erroneously placed there, and subsequently paid over to him the \$30,000 paid by the Georgia Cotton Co. in settlement.

Substantially all of the foregoing facts will appear from the records in the custodian's office, but, of course, the statement of oral conversation and conferences are based upon recollection of the attorney who handled the transaction for the Georgia Cotton Co., Mr. Mays, the then president of the company now being dead.

POTTLE & HOFMAYER,  
*Attorneys for Georgia Cotton Co.*

ALBANY, GA.

AUGUST 5, 1919.

HON. FRANK E. SPAIN,  
*First National Bank Building, Birmingham, Ala.*  
Re Georgia Cotton Co.—H. H. Blijdenstein.

DEAR MR. SPAIN: I returned to my office this morning after an absence of several days and find a copy of the receipt which you propose to have executed by the Alien Property Custodian and H. H. Blijdenstein by his attorney in fact,

the American Express Co. With the exception which I am noting, the receipt seems to be in proper form, but we would like to have added to it the following. Just before the last paragraph beginning with "Whereas," we would like to have the following inserted:

"Whereas said Georgia Cotton Co. did on January 14, 1918, enter into an agreement with H. H. Blijdenstein upon a valuable consideration, by the terms of which said contract was canceled and surrendered to the said Georgia Cotton Co.; and,

"Whereas the said Georgia Cotton Co. contends that said adjustment and cancellation of said contract was legal and valid and the Alien Property Custodian contends, on the other hand, that the said purported adjustment and cancellation were invalid because of the fact that at the time the same was entered into the said H. H. Blijdenstein had been classified as an enemy of the United States Government and for this reason said purported adjustment and cancellation was in violation of the said trading with the enemy act."

We would also like to have the last paragraph beginning with the word "Whereas" so changed to strike the word "resting" after liability and insert in its stead the words "claimed to rest."

At the end of the last paragraph on the last page after the word "thereof," we would like to have a comma inserted and the following language added: "and with respect to any and all liability arising out of any settlement of said contract claimed to have been heretofore made by the Georgia Cotton Co."

It would appear to be more in accordance with the usual custom for the receipt to be signed H. H. Blijdenstein by his attorney in fact, American Express Co., but if you prefer the other form we do not insist on this.

We are inclosing you herewith a copy of the contract with the cancellation thereof, which on the original, as you recall, the writing was in ink across the face of it.

We trust you will have no objection to these additions to this receipt, our purpose being, of course, to state the facts and contentions as they really are and to protect our client against any possible question which might hereafter arise growing out of the former settlement of the contract.

Yours very truly,

POTTLE & HOFMAYER.

#### MEMORANDUM ARGUMENT

The following propositions would seem to be self-evident:

- (1) Even if Blijdenstein had been a German subject, the Georgia Cotton Co. had a right to make the contract with him.
- (2) The Government recognized the validity of the contract by making a demand under it.
- (3) If Blijdenstein had been an enemy alien the contract would have been void and the Georgia Cotton Co. could have repudiated it, without the payment of any money.
- (4) Blijdenstein was never declared to be an alien enemy, and trade with him was not even forbidden until 60 days or more after the cancellation of the contract with the Georgia Cotton Co.
- (5) The Georgia Cotton Co. had an undoubted legal right to cancel the contract with Blijdenstein at the time it was canceled, and from that time on the contract became null and void.
- (6) The \$7,500 commissions paid S. Geissler was paid under authority of a blanket power of attorney in good faith and was fully explained in the record, and could in no sense be regarded as a secret or fraudulent transaction, especially in view of the fact that omission to include this sum in the receipt is fully explained by Mr. Billingslea in his affidavit in the file.
- (7) Even if this \$7,500 could under any circumstances be regarded as a secret profit made by the agent, this was a matter solely between him and his principal and did not in any way concern the Government or authorize the demand made.
- (8) Even if Geissler were a German subject at the time of the settlement, neither Mr. Billingslea nor Mr. Mays had any knowledge of it or reasonable grounds to suspect it. Certainly the sworn testimony of two loyal, reputable American citizens should be accepted by the Government in preference to that of an alien enemy; but even if their statements be not accepted, only \$7,500 was paid to Geissler, the check for \$42,000 being made payable direct to his principal, H. H. Blijdenstein.



(9) The Government ought not to retain the money of a citizen unless it is in equity and good conscience entitled to it.

(10) The Government having admitted its mistake in forbidding American citizens to trade with Blijdenstein and in putting him on the enemy trading list, and having recognized the validity of the contract between the Georgia Cotton Co. and Blijdenstein, was bound to recognize also the validity of the cancellation, and in no event had the right to pay to Blijdenstein \$30,000 which rightfully belonged to the Georgia Cotton Co. and which had been wrongfully taken from it under the Government's demand.

POTTLE & HOFMAYER,  
*Attorneys for Georgia Cotton Co.*

ALBANY, GA.

ALIEN PROPERTY CUSTODIAN,  
*Washington, January 23, 1925.*

HON. ARTHUR CAPPER,  
*Chairman Committee on Claims,  
United States Senate, Washington, D. C.*

MY DEAR SENATOR: Your communication of January 10, 1925, inclosing copy of Senate bill 3623 for relief of Georgia Cotton Co. and requesting all papers or copies of same in the files of the office of the Alien Property Custodian and requesting my opinion as to the merits of said bill is hereby acknowledged.

In reply thereto you are advised that the Georgia Cotton Co., according to the files of this office, engaged in the cotton brokerage business at Albany, Ga. After the outbreak of the war the investigation branch of this office reported that one H. H. Blijdenstein, a citizen of Holland, was conducting business with enemies of this country and was a party to certain contracts for material in this country to be furnished our enemies. Among contracts reported was one with the Georgia Cotton Co., mentioned above. This contract, dated June 12, 1916, was for the purchase of 2,000 bales of cotton by the said Blijdenstein for delivery 45 days after the conclusion of peace at 18 $\frac{3}{4}$  cents per pound delivered at Rotterdam if shipped from Savannah, Ga., or 18 $\frac{3}{4}$  cents per pound if shipped from New Orleans, La.

Upon the reporting of this contract to the Alien Property Custodian a demand was made by that official May 12, 1919, upon the said Georgia Cotton Co. for all the right and interest of the said Blijdenstein in said contract. In reply to said demand the said Georgia Cotton Co. contended that they had no interest in the contract at that time, that H. H. Blijdenstein was not an enemy, and, on the other hand, he was a citizen of Holland, and that when said contract was entered into they were ignorant of any enemy dealings of the said H. H. Blijdenstein. Said Georgia Cotton Co. also contended that said contract with said H. H. Blijdenstein had been canceled January 12, 1918, with said company through their representative at New Orleans, S. Geissler by name. The said Georgia Cotton Co. immediately notified the Alien Property Custodian of the abrogation of said contract under the provisions of subsection (b) of section (a) of the trading with the enemy act. The then Alien Property Custodian insisted that the cancellation of the contract with Geissler was illegal and contrary to the provisions of the trading with the enemy act, because it was in fact trading with an enemy, and insisted upon a payment by the said Georgia Cotton Co. of the amount due on said contract to H. H. Blijdenstein because of the increased value of the cotton.

In this connection it should be stated that in the cancellation of said contract with Geissler, representative of H. H. Blijdenstein, the Georgia Cotton Co. had paid the sum of \$49,500 as growing out of the increased value of the cotton in excess of the contract price as above stated. The Alien Property Custodian insisted that the Georgia Cotton Co. was indebted H. H. Blijdenstein the amount represented by the difference between the value of the cotton 45 days after conclusion of peace, and the original contract price of 18 cents plus per pound, that, of course, being in accordance with the contract made at date of delivery, which at that time had not yet arrived.

There was considerable correspondence, negotiation, and interviews between the representatives of the Alien Property Custodian and the representatives of the Georgia Cotton Co., and finally the Alien Property Custodian agreed to accept and did accept the sum of \$30,000 on September 11, 1919, in settlement of the amount claimed to be due on said contract from the Georgia Cotton Co. to H. H. Blijdenstein, and gave to the Georgia Cotton Co. a full release and ac-

quittance of any other or further claims growing out of said contract. This apparently is the \$30,000 for the return of which Senate bill 3623 provides.

On the 18th of November, 1919, the Georgia Cotton Co. filed a claim with the Alien Property Custodian for the return of this \$30,000, but withdrew said claim on October 30, 1920.

On January 28, 1921, J. C. Van Kempen, receiver of the estate of H. H. Blijdenstein, brought suit against Francis P. Garvan, the then Alien Property Custodian, and John Burke, Treasurer of the United States, and J. J. Blijdenstein, the latter a brother of H. H. Blijdenstein, and a representative or partner in business of the latter, for the return of all the property of said H. H. Blijdenstein. This suit was brought in the Supreme Court of the District of Columbia and after hearing had, the said court decided said suit in favor of the plaintiff, final decree being dated April 19, 1921. In the fourth paragraph of said decree the said court decided "that H. H. Blijdenstein was neither an enemy nor an ally of enemy at any time during his life," and further decrees the return of all property taken over by the Alien Property Custodian of the said H. H. Blijdenstein to the receiver plaintiff in said suit.

The property then returned consisted of certain notes amounting to \$8,166.66 cash \$7,857.83, and interest in real estate in New Orleans, said property being 2009 Robert Street in said city. This was all the property in the hands of the Alien Property Custodian. In addition the court decreed the return of \$59,293.83 then deposited in the Treasury, being cash seized by the Alien Property Custodian as moneys of the said H. H. Blijdenstein. This latter amount included the \$30,000 received by the Alien Property Custodian from the Georgia Cotton Co. referred to in said Senate bill 3623.

The Alien Property Custodian contended originally that H. H. Blijdenstein was an enemy based upon the fact that, although he was a citizen and resident of Holland, he had been placed on the enemy black list by the War Trade Board on March 15, 1918. This, of course, made him an enemy within the provisions of the trading with the enemy act, notwithstanding he was a citizen and resident of Holland, a neutral country. This listing is based upon information collected by the investigation bureau, that Blijdenstein was purchasing and furnishing materials to enemies.

The decision of the court above referred to, of course, is to the contrary and established the nonenemy status of said H. H. Blijdenstein, which entitled him to the return of his property seized by the Alien Property Custodian, under provisions of section 9 of the trading with the enemy act.

It is noted that the cancellation of the contract by the Georgia Cotton Co. with S. Geisler, the representative of H. H. Blijdenstein January 12, 1918, is prior to the date when the said Blijdenstein was placed on the enemy list, which was March 15, 1918.

The \$30,000 paid the Alien Property Custodian by the Georgia Cotton Co. and which is now asked to be returned by said bill was paid over to H. H. Blijdenstein, and while I will not assume to express an opinion as to the legal question involved, it would seem that the Georgia Cotton Co. has a claim against the said Blijdenstein or his representatives for the return of the \$30,000 which that firm claims it was wrongfully and illegally compelled to pay over to the Alien Property Custodian, if the cancellation of said contract on January 12, 1918, with S. Geisler, representative of H. H. Blijdenstein was legal, and, of course, the right of said Georgia Cotton Co. to any return either by Blijdenstein or any claim it may have against the United States Government depends upon the legality of this cancellation.

It is undoubtedly true that the decision of the court that Blijdenstein was never an enemy made the seizure of this \$30,000 by the Alien Property Custodian illegal, as the Alien Property Custodian in fact seized the property of a non-enemy, which, of course, he could not do, as no power was vested in him to do so under the provisions of the trading with the enemy act.

If necessary, this office will furnish you with a copy of all the papers constituting the original contract between the Georgia Cotton Co. and H. H. Blijdenstein, a copy of the cancellation agreement, and a copy of the acquittance of agreement executed by the Alien Property Custodian for the payment to him of the \$30,000, but I assume that copies of these papers have already been furnished you by the claimant, the Georgia Cotton Co., proposed beneficiary in said Senate bill.

Very respectfully,

THOMAS W. MILLER,  
*Alien Property Custodian.*