

APPENDIX.

The following summary of the argument of *Messrs. Frederick R. Coudert, Howard Thayer Kingsbury, and Mahlon B. Doing* for the appellees in *Direction Der Disconto-Gesellschaft v. United States Steel Corporation*, 267 U. S. 22, should be noted as an addition to the report of that case.

Certificates of corporate stock duly endorsed in blank are treated by the modern law as constituting property in themselves, (a) capable of manual delivery like chattels, in pledge or otherwise; (b) the subject of jurisdiction *in rem*; and (c) the subject of taxation as such.

(a) *Christian v. Atlantic & N. C. R. R. Co.*, 133 U. S. 233; *Travis v. Knox Terpezone Co.*, 215 N. Y. 259; *In re Whiting*, 150 N. Y. 27; *Williams v. Colonial Bank*, 38 Ch. Div. 388; *Uniform Stock Transfer Act*; *Williston, Contracts*, Vol. I. pp. 835-837, Vol. II, pp. 1957, 1958; *Cook, Corporations*, 8th ed., Vol. II, pp. 1437 *et seq.*; *Sedgwick, Damages*, 9th ed., Vol. I, p. 521; (b) *Yazoo R. R. v. Clarksdale*, 257 U. S. 10; *South Dakota v. North Carolina*, 192 U. S. 286; *Mitchell v. Leland Co.*, 246 Fed. 103; *Vidal v. South American Securities Co.*, 276 Fed. 855; *Beal v. Carpenter*, 235 Fed. 273; *Blake v. Foreman Brothers Banking Co.*, 218 Fed. 265; *Merritt v. American Steel Barge Co.*, 79 Fed. 228; *Simpson v. Jersey City Contracting Co.*, 165 N. Y. 193; *Wynn v. Griffenhagen*, 167 App. Div. (N. Y.) 572; *General Motors Corp. v. Ver Linden*, 199 App. Div. (N. Y.) 375; *Griswold v. Kelly Springfield Tire Co.*, 120 Atl. (N. J.) 324; *Puget Sound Nat. Bank v. Mather*, 60 Minn. 362; *Stern v. The Queen*, (1896) 1 Q. B. 211; *Matter of K.*, 58 German Imperial Court Rep. (Civil Cases) 8; *Beale, Foreign Corporations*, pp. 483-485; (c) *De Ganay v. Lederer*, 239 Fed. 568, 250 U. S. 376; *Hatch v. Reardon*, 184 N. Y. 431.

Certainly, so long as there is no direct conflict between two jurisdictions in the exercise of power over particular shares of corporate stock, the foregoing principles are not adversely affected by the decisions in *Jellenik v. Huron Copper Mining Co.*, 177 U. S. 1; *Amparo Mining Co. v. Fidelity Trust Co.*, 75 N. J. Eq. 555; *Miller v. Kaliwerke &c. Gesellschaft*, 283 Fed. 746; *Columbia Brewing Co. v. Miller*, 281 Fed. 289.

Consequently, the seizure by the Public Trustee in England of the endorsed stock certificates in controversy, in accordance with the provisions of the British Trading with the Enemy Acts 1914-1918, operated as a lawful seizure of the shares represented thereby as enemy property within the British jurisdiction, which will be considered effective everywhere. *United States v. Chemical Foundation*, 294 Fed. 300; *American Banana Co. v. United Fruit Co.*, 213 U. S. 347; *Luther v. Sagor*, (1921) 2 K. B. 532.

Furthermore, without regard to the property characteristics of these duly endorsed certificates of corporate stock, there has been in effect a voluntary transfer of the enemy interest in the shares represented thereby to the British Government by the provisions of the Treaties of Versailles and Berlin.

The British War Legislation and the Vesting Orders and measures of transfer executed thereunder with regard to these shares attempted and intended upon their face to transfer to the Public Trustee every right, title and interest of the enemy in such shares.

Every such attempt and intention of the British War Legislation and the Vesting Orders and measures of transfer executed thereunder was ratified, confirmed and rendered fully effective by the so-called "economic clauses" of the Treaty of Versailles without regard to the technical *situs* of the interests intended to be covered thereby. *Treaty of Versailles*, Art. 297, Annex Arts, 297-298, subd. 1 and 3; *B. & Sohne v. Baux*, 107 German Imperial Court Reports (Civil Cases) 43.

This intention of the Treaty is conclusively evidenced by the practical construction placed thereon by the parties. Great Britain has given and Germany has accepted under the Treaty, credit for the proceeds of the sale of certain endorsed certificates of stock in American corporations which were seized by the Public Trustee during the war, and Germany has paid compensation under the Treaty to her Nationals whose stock was so seized and sold. *American and English Encyc. of Law*, Vol. 28 pp. 488-490 and citations.

The Treaty has thus operated as a taking by Germany, in the exercise of her right of eminent domain, of the property of her nationals, wherever situate, in the payment of her war obligations, for which taking Germany agreed to provide, and did in fact provide, compensation to her nationals. *Treaty of Versailles*, Art. 297, par. 1; *Constitution of Germany*; (Reichsgesetzblatt 1919, pp. 1381 *et seq.*) Arts. 4, 7, 178-180; *German Laws*, No. 6958 of July 16, 1919, No. 7033 of August 31, 1919 and No. 7573 of May 26, 1920; *Directions of German Government*, issued thereunder November 15, 1919; *The Reply of the Allied and Associated Powers to the Observations of the German Delegation on the Conditions of Peace*, pp. 293, 294; *Luxardo v. Public Trustee*, (1924) 1 Chancery.

The German Government possesses the power, as an attribute of sovereignty admitted by international law, to devote the property of its nationals, wherever situate, to the termination and settlement of the war. This power in the nature of Eminent Domain finds numerous precedents in modern times as exemplified in treaties entered into by the United States, and has been sustained by this Court. It is recognized by authorities on international law generally and by the practice of civilized states. *Butler, Treaty Making Power of the United States*, Vol. II, p. 293 and citations; *Hijo v. United States*, 194 U. S. 315; *Herrera v. United States*, 222 U. S. 558; *James v. The Second Russian Insurance Co.*, 210 App. Div. (N. Y.)

82; *Cook v. Tait*, 265 U. S. 47; *The Blonde*, (1922) 1 App. Cas. 335.

The Treaty of Versailles contains a covenant binding German nationals not to question the title of the Public Trustee in and to the shares in controversy. *Treaty of Versailles, Annex* Art. 298, subd. 2.

The Treaty of Berlin, under the principles of international law, has adopted into American Law for the benefit of our Associates the ratifications and covenants of the Treaty of Versailles as against Germany and her nationals. *Treaty of Berlin*, Art. 2, Sec. 1; *Junkers v. Chemical Foundation*, 287 Fed. 597; *United States v. Chemical Foundation*, 294 Fed. 300; *Lange v. Wingrave*, 295 Fed. 565; *The Resolution*, 2 Dall. 1, 2 Dall. 19.

As the Government of the United States has taken no action at any time to seize under its war legislation, or to charge under the Treaty of Berlin, the shares of stock in American corporations represented by the certificates in question, that Government has no right or interest in this controversy. *Miller v. Rouse*, 276 Fed. 715; *Stoeck v. Public Trustee*, (1921) 2 Chancery 67; *Foster v. Neilson*, 2 Pet. 293; *Moore, Digest of International Law*, Vol. V, p. 222 and citations.