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Treaty Series No. 23 (1928)

Exchange of Notes

BETWEEN HIS MAJESTY'S GOVERNMENT
IN GREAT BRITAIN AND THE
GOVERNMENT OF THE
UNITED STATES OF AMERICA

respecting the

Reciprocal Release of Property sequestered
in both Countries under
Trading with the Enemy Acts

London, January 4/February 23, 1927

Presented by the Secretary of State for Foreign Affairs
to Parliament by Command of His Majesty

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**Exchange of Notes between His Majesty's Government
in Great Britain and the Government of the United
States of America respecting the Reciprocal Release
of Property sequestrated in both Countries under
Trading with the Enemy Acts.**

(1.)

Mr. Sterling to Sir Austen Chamberlain.

Sir,

London, January 4, 1927.

In connexion with the recent discussions between the British Administrator of German Property and Mr. Ralph Hill, of the Department of State, with a view to reaching an arrangement between the Governments of Great Britain and the United States for the reciprocal release by them of property sequestrated in both countries under Trading with the Enemy Acts, I have the honour to enclose a memorandum indicating the position of the American Government with regard to the release of property to British subjects held by the Alien Property Custodian under the American Trading with the Enemy Act, and of its understanding of the position of the British Government with regard to the release to American citizens of property held by the British Administrator of German Property.

I shall appreciate it if you will be good enough to advise me whether the understanding of the competent American authorities, as set forth in the attached memorandum, concerning the position of the British authorities on the subject of reciprocity in connexion with the administration of the British Trading with the Enemy Act is correct, and, if so, whether, on the basis of his understanding of the position of the American Government, the British administrator is prepared to release to American citizens property held by him in cases falling within the limits outlined in the memorandum.

On behalf of my Government, I am directed to state that the competent American authorities are prepared to assure reciprocal treatment (as defined in the memorandum) to British subjects whose property is held by the Alien Property Custodian.

I have, &c.

F. A. STERLING,

Chargé d'Affaires ad interim.

Enclosure in (1).

Memorandum concerning the Reciprocal Release by the British and American Governments of Property sequestrated in both Countries under the Trading with the Enemy Acts.

THE following is a statement of the position of the American Government in regard to the release to British subjects of property

held by the Alien Property Custodian under the Trading with the Enemy Act, and of its understanding of the position of the British authorities in regard to the release to American citizens of property held by the British Administrator of German Property.

1. *Married Women Cases.*

(A.)—*Position of the American Government.*

Section 9 (b) 2 of the Trading with the Enemy Act as amended authorises the return to a woman—

- (a) who, at the time of her marriage, was a subject or citizen of a nation which had remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and
- (b) who, prior to the 6th April, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary,

of property acquired—

- (a) from whatever source prior to the 1st January, 1917,
- (b) from non-enemy sources at any time, whether or not such woman reacquired, prior to or since the 10th January, 1920, the nationality which she had at the time of her marriage to a German or Austro-Hungarian national.

Claims of British women who married enemies prior to the war and who reacquired British nationality on or before the 1st June, 1926, will be allowed.

The foregoing is conditional on reciprocal rights being extended to citizens of the United States.

(B.)—*Position of the British Government.*

Property will be returned to a native-born American woman who had married a subject of a former enemy State and had reacquired American citizenship, either prior to or since the 10th January, 1920, but not later than the 1st June, 1926.

This does not apply to property of enemy origin, the transfer of which was illegal after the outbreak of war under the British Trading with the Enemy Act.

This procedure, moreover, can only apply in the case of property which has not already been liquidated or credited to an ex-enemy Power, or been so applied as to put it out of the power of the British Government to release it.

2. *Debt Claims.*

(A.)—*Position of the American Government.*

The American Trading with the Enemy Act authorises on the basis of reciprocity the payment from sequestered property of debts owing to and owned by British claimants prior to the passage of the original Act, provided such debt, in the nature of a pledge or lien, arose in reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States.

(B.)—*Position of the British Government.*

In all cases where enemy businesses, whether conducted by corporation, partnership, or individual concerns, have been liquidated in Great Britain under war legislation, the claims of American creditors, wherever resident, have been treated on an equal footing with those of British creditors.

3. *Shares of Stock in Depot Account of German Banks.*

(A.)—*Position of the American Government.*

No distinction is made between the claims of British or American citizens with respect to claims under this category. The American authorities take the position that it is not sufficient for a claimant to allege that he had a certain number of shares of stock. If he cannot give the numbers of the certificates of such shares, he should furnish other proof sufficient to identify the particular property from that class with which it had become commingled. However, it is not necessarily incumbent upon the claimant to give the actual numbers of the shares so held.

(B.)—*Position of the British Government.*

Upon proof of any American, Allied or neutral subject that he is absolutely entitled as between himself and the German bank or other enemy to any particular shares, a release would be made; further, even in cases where the applicant is unable to identify the actual number of his particular shares, and can only establish that a certain number of the shares held in depot had been held on his account, he would also be entitled to release, subject, however, to a *pro rata* reduction in the event of the depot being short.

4. *Corporations.*

(A.)—*Position of the American Government.*

The return is permitted of the assets of a corporation in the following cases:—

(1.) Provided the corporation—

- (a.) Was not incorporated in enemy countries, *i.e.*, Germany, Austria or Hungary.
- (b.) Did not do business within enemy territory during the war.
- (c.) Was not declared an enemy by Presidential proclamation, regardless of the nationality of the owners of the stock.

(2.) Provided—

- (a.) The corporation was not incorporated in any enemy country, *i.e.*, Germany, Austria or Hungary.
- (b.) More than 50 per cent. of the capital stock of the corporation was owned by non-enemies at the time of the seizure of such assets by the Alien Property

Custodian, regardless of the fact that such corporation may have been an enemy by reason of doing business within enemy territory or may have been declared an enemy by Presidential proclamation.

(B.)—*Position of the British Government.*

Under British law a corporation incorporated and having its seat in Germany is considered a German national irrespective of the nationality of any or all of its stockholders. A corporation incorporated and having its seat outside of enemy territory irrespective of the nationality of its stockholders is considered a non-enemy national.

(2.)

Sir Austen Chamberlain to Mr. Houghton.

Your Excellency, *Foreign Office, February 23, 1927.*

WITH reference to the note which the Chargé d'Affaires of the United States was so good as to address to me, under date of the 4th January, on the subject of the reciprocal release by His Majesty's Government in Great Britain and the Government of the United States of properties sequestered in both countries under the Trading with the Enemy Acts, I have the honour to state that the memorandum enclosed in that note sets out accurately the position of His Majesty's Government in regard to the matters referred to therein, subject to the following slight amendments:—

On page 2 of the memorandum, line 11,* "The British Trading with the Enemy Act" should read "The British Trading with the Enemy Acts."

On page 3 of the memorandum, in the third paragraph marked "(B.)† *Position of the British Government,*" the word "number" should be "numbers," the question involved being the numbers of the certificates of the particular shares referred to.

2. In so far as the memorandum refers to questions of release, His Majesty's Government in Great Britain are prepared to carry out releases in the cases referred to therein, but portions of the memorandum appear to be inapplicable to release questions, notably paragraph 2 (B), where it is a question of payment of American creditors, and paragraph 4 (B), where the position of His Majesty's Government is defined and is governed by decisions of the courts and of the Mixed Arbitral Tribunals.

3. I beg leave to state that the position of His Majesty's Government on the subject of reciprocity in connexion with the British Trading with the Enemy Acts and the Treaties of Peace is accurately defined in the memorandum enclosed in Mr. Sterling's

* *I.e.*, paragraph 1 (B).

† *I.e.*, paragraph 3 (B).

note under reference (subject to the above-mentioned slight amendments), and that so far as the question of property capable of release is involved, they are prepared, on being granted reciprocal treatment by the Government of the United States within the terms of the memorandum, to release such property as is covered by the terms of the understanding and on the conditions stated therein.

I have, &c.

AUSTEN CHAMBERLAIN.
