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THE PRESENT WAR LEGISLATION AND JURISPRUDENCE OF THE UNITED STATES

(Address by Attorney Chester J. Gerkin of the Alien Property Custodian's Office before the Law Forum, College of Law, October 5, 1918)

The sessions of the present Congress have probably been the most important in the history of the Nation. The Sixty-fifth Congress began March 4, 1917, and met in special session on April 2, 1917. When convened it listened to a notable address by the President in which he asked that the state of war thrust upon the United States by the Imperial German Government be formally declared. This was done by Joint Resolution No. 1 approved April 6, 1917. All the resources of the country were pledged for the purpose of prosecuting the war.

There have been more than 100 laws, denominated war measures, enacted by the present Congress. Naturally, the first action was to make provision to finance the war. On April 24, 1917, the emergency bond issue act, authorizing the issuance of \$7,000,000,000 worth of Government securities, was approved. This is the largest bond issue ever authorized by any legislative body in the history of the world. The "Fourth Liberty Bond Act," approved July 9, 1918, increased the amount authorized by the three preceding acts to \$20,000,000,000. However, all the Liberty Loan issues authorized to date have been over-subscribed.

I shall not mention all of the Acts passed which have to do in some way with our country's war program, but will note some *twenty* of the most important, following the chronological order.

An act authorizing the Allied Governments to recruit from their nationals in this country was approved May 7, 1917. On May 12, 1917, joint resolution No. 2 authorizing the President to take possession of enemy vessels within the jurisdiction of the United States was approved. Vessels owned in whole or in part by a corporation, citizen, or subject of any nation with which we might be at war, or which are under register of such a nation, can be taken over. The act directed the appointment of a board of survey to determine the actual value of each vessel and its equipment, which board shall make a written report of their findings to be preserved by the Navy Department, such record to be competent evidence in all proceedings on any claim for compensation.

The Selective Draft Act was approved May 18, 1917. It was made applicable to all male persons not alien enemies who are or who have declared their intention to become citizens between the ages of 21 and 30, both inclusive. Exemption is provided for Federal and State officers, ministers of religion, members of any well-recognized religious sect whose existing principles forbid its members to participate in war in any form; and the President is authorized to exclude or discharge from the draft persons employed by the Government, persons engaged in industries found to be necessary to the maintenance of national interests during the emergency, those whose dependent relatives rendered their exclusion advisable, and those found to be physically or morally deficient. This act was recently amended so as to make persons between the ages of 18 and 45, inclusive, subject to its provisions. The enrollment, including the previous registration, shows 23,500,000 as the nation's available man power.

The Espionage Act was approved June 15, 1917. This law contains 13 titles, and penalizes acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States; punishes espionage, conveying information calculated to injure the country or hinder its military operations, the misuse of passports, the mails, etc. This statute has introduced a new word into our law, which as defined in its first section covers acts long known to be injurious to national security but never before penalized in the United States. It is not in terms temporary legislation, and repeals the ineffective statute of somewhat similar purport enacted March 3, 1911. Section 3 of Title 1 was amended by an act approved May 18, 1918, commonly known as the "Sedition Act." After enumerating several prohibited acts of disloyalty, this section continues: "* * * and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years or both; *Provided*, That any employee or official of the United States Government who commits any disloyal act or utters any disloyal or unpatriotic language, or who, in an abusive and violent manner criticises the Army or Navy or flag of the United States shall be at once dismissed from the service."

Every nation engaged in this war has found it necessary to regulate the production, distribution, and consumption of food and fuel. The Food Survey and Food Control Acts were approved August 10, 1917. The Secretary of Agriculture is charged with the administration of the Food Survey Act; it provides for investigations relative to the production and distribution of foodstuffs, and makes large appropriations for use in a campaign for increasing food production, the prevention and eradication of plant and animal diseases, the elimination of waste and the proper utilization of food products. The Food Control Act makes it unlawful for any person to attempt to enhance prices of the necessities of life by destruction of supplies, restriction of production, hoarding, monopolization, or discriminatory practices. It authorizes

the President to purchase and to sell at reasonable prices necessities; to requisition foods, fuels, and other supplies for any public use connected with the common defense—paying a just compensation therefor; to requisition and operate any factory, mine, or other plant through which necessities are produced; to commandeer, for a just compensation, distilled spirits in stock at the date of the passage of the act; to fix the price of coal and coke, and establish regulations for their production and distribution; and to license dealers in food supplies. The act provides that after September 9, 1917, no food materials shall be used in the production of distilled liquors for beverage purposes, and prohibits the importation of such liquors. In order to stimulate the production of wheat, the President is empowered to fix a guaranteed price at not less than \$2 per bushel. The sum of \$150,000,000 is appropriated for the purposes of the act.

The War Revenue Act was approved October 3, 1917. This act levies war-income, excise, excess-profits, admissions and dues, stamp, and estate taxes. It increases the taxes on liquors, tobacco products, etc., and the postage rate.

An Act approved October 5, 1917, provides that no citizen of the United States serving in an allied army or navy shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service.

Foreign vessels were permitted to engage in the coastwise trade of the United States during the present war and a period of 120 days thereafter by an act approved October 6, 1917. On the same date an act was approved authorizing the Commissioner of Patents to withhold patents covering military inventions until the termination of the war and to order that such an invention be kept secret.

The Military and Naval Insurance Act which became a law October 6, 1917, created a Division of Military Insurance, in the War-Risk Insurance Bureau of the Treasury Department, to provide (a) governmental family allowances and compulsory allotments of pay for the support of dependents; (b) compensation for death, or disability due to injury or disease resulting from service; (c) ability to get additional insurance at low cost. Under the provisions of this act, as amended by the Act of June 25, 1918, officers and enlisted men are privileged to take out life insurance to the amount of \$10,000. The rate is very low, practically \$8 per thousand. They are obliged to make allotments out of their pay for the benefit of their wives and children. To such allotments the Government adds allowances to dependent relatives, where the soldier or sailor has been in the habit of contributing to their support. In case of the death or disability of a soldier in line of duty compensation is allowed his dependent relatives; this in addition to any Government life insurance for which the soldier may have contracted. In a speech delivered in the House of Representatives on July 9, 1918, Hon. Albert Johnson, of Washington, said: "The war-risk insurance act, with its amendments, is one of the most progressive and generous laws ever enacted by any legislative body, and is designed to be more effective and more fair than any form of pension legislation heretofore tried."

The Trading with the Enemy Act, approved October 6, 1917, makes it unlawful for any person in the United States, except with the license of the President, to have any form of business intercourse with an enemy or ally of an enemy. It provides for an officer known as the Alien Property Custodian whose function is to receive reports covering property belonging to or debts owing to enemies or allies of enemies, to require such property or funds to be delivered to him; and to exercise all the powers of a common-law trustee in respect thereto, including the right to manage and dispose of same as though he were the absolute owner. In the words of Hon. A. Mitchell Palmer, Alien Property Custodian, "the purpose of the Trading with the Enemy Act is twofold: (1) to prevent aid or comfort to enemies or allies of enemies, and (2) to make available for war financing such funds in this country as belong to them." The act prohibits the publication and circulation in a foreign language of any matter respecting the government of the United States or any nation engaged in the present war or matter relating to the war, except under a permit granted by the President. It also authorizes the President to cause to be censored communications passing between the United States and any foreign country; and to place an embargo on imports.

An Act approved January 16, 1918, authorized the calling into the service of the United States the militia and other locally created armed forces in the Philippine Islands. Pursuant to this statute the Philippine National Guard is soon to be Federalized.

The Soldiers' and Sailors' Civil Relief Act, approved March 8, 1918, protects the members of the Military and Naval Establishments of the United States engaged in the present war in their civil rights. Under its provisions judgment by default cannot be entered against a person in the military service except upon a proper showing. A soldier's dependents cannot be evicted from rented premises except upon a showing that the tenant's ability to pay the agreed rent has not been materially affected by reason of military service. Installment contract and mortgage foreclosures are circumscribed for the protection of soldiers and their dependents. Provision is made for the payment, by the Government, of lodge dues and other insurance premiums during the period of the soldier's service, the Government to be reimbursed by the soldier within one year after his discharge from the Army. A soldier's land can not be sold for taxes or other assessments if he files affidavit showing that his ability to pay has been materially affected by reason of his military service. And if he is a homesteader or an entryman on desert or mining land his rights as such can not be prejudiced by reason of his absence from the land on military duty.

The Railroad-control law, approved March 21, 1918, provides for the operation of transportation systems while under Federal control and for the just compensation of their owners. (The President was authorized to take possession and utilize systems of transportation in time of war by the Army Appropriation Act passed August 29, 1916.) The compensation is to be determined by agreement or may be adjudicated

by the Court of Claims. Section 14 of the act provides, in part: "That the Federal control of railroads and transportation systems herein and heretofore provided for shall continue for and during the period of the war and for a reasonable time thereafter, which shall not exceed one year and nine months next following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace. * * * The President may relinquish all railroads and systems of transportation under Federal control at any time he shall deem such action needful or desirable." And Section 16, "That this Act is expressly declared to be emergency legislation enacted to meet conditions growing out of the war; and nothing herein is to be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of carriers or the method or basis of the capitalization thereof."

An Act approved April 5, 1918, entitled "An Act to provide further for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to provide credits for industries and enterprises in the United States necessary or contributory to the prosecution of the war, and to supervise the issuance of securities, and for other purposes," created a War Finance Corporation with capital stock of \$500,000,000, all subscribed by the Federal Government, and vested its management in a board of directors consisting of the Secretary of the Treasury and four other persons to be appointed by the President.

The Sabotage Act approved April 20, 1918, penalizes the willful injury or destruction of war material, war premises or utilities. War material is defined to include arms, ammunition, livestock, clothing, food, fuel, etc.; "war premises" include buildings, grounds, mines, arsenals, etc., where war material is produced or stored; and "war utilities," railroads, electric lines, roads, canals, bridges, locks, reservoirs, telegraph plants, wireless stations, water and gas mains, etc., used by or for the military or naval force of the United States, or any associate nation in this war.

An Act approved May 9, 1918, amends the Naturalization laws in important particulars. It provides that any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, may petition for naturalization without proof of the required five years' residence within the United States. And that no citizen of any country with which the United States is at war "shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war, or was at that time entitled to become a citizen of the United States without making a declaration of intention, or unless his petition for naturalization shall then be pending and he is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that sub-

ject. * * * *Provided further*, That the President of the United States may, in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon he shall have the privilege of applying for naturalization."

An Act approved May 22, 1918, entitled "An Act to prevent in time of war departure from or entry into the United States contrary to the public safety," requires that all persons secure permission to depart from the country; and, subject to such exceptions as the President may prescribe, declares it to be unlawful for any citizen of the United States to depart from or enter the country unless he bears a valid passport.

The Act approved June 27, 1918, entitled "An Act to provide for vocational rehabilitation and return to civil employment of disabled persons discharged from the military or naval forces of the United States, and for other purposes," makes liberal appropriations and provision for restoring to health and usefulness persons injured in the service.

The Act approved July 18, 1918, entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," authorizes the President to requisition any vessel for any national purpose connected with the war.

On July 23, 1918, the President, pursuant to a resolution of Congress, issued a proclamation taking control of all telegraph and telephone systems within the jurisdiction of the United States; the operation of same to be by the postmaster-general.

The Jurisprudence.

The enforcement of the Selective Draft Act has given rise to some interesting questions of constitutional, international, and administrative law. The constitutionality of this act was upheld in the *Selective Draft Cases*, 245 U. S. 366, decided January 7, 1918. In the later case of *Cox v. Wood*, decided May 6, 1918, Mr. Chief Justice White, referring to the *Selective Draft Cases*, observed: "* * * in those cases the constitutional power of Congress to compel the military service which the assailed law commanded was based on the following propositions: (a) That the power of Congress to compel military service and the duty of the citizen to render it when called for were derived from the authority given to Congress by the Constitution to declare war and to raise armies. (b) That those powers were not qualified or restricted by the provisions of the militia clause and hence the authority in the exercise of the war power to raise armies and use them when raised was not subject to limitations as to use of the militia, if any, deduced from the militia clause. And (c) that from these principles it also follows that the power to call for military duty under the authority to declare war and raise armies and the duty of the citizen to serve when called were coterminous with the constitutional grant from which the authority

was derived and knew no limit deduced from a separate and for the purpose of the war power wholly incidental if not irrelevant and subordinate provision concerning the militia found in the Constitution."

Section 13 of the Selective Draft Act which makes it an offense to keep brothels and saloons within a prescribed zone around military camps, came before the Federal District Court (S. D. Ohio) in *United States v. Casey, et al.*, 247 Fed. 362. The court sustained the validity of the provision, holding that it was enacted in the exercise of the war power rather than police power and that the war power included the nation's right of self-preservation not only of itself but all its citizens. In the opinion the court said:

"The statute was framed in recognition of the fact that the greatest efficiency attainable by an army depends upon the sobriety, healthfulness, and high moral tone of the soldiers composing it. Soldiers addicted to the use or under the influence of liquor are less orderly, less obedient, less competent to discharge their duties, and more prone to disease than when in their normal condition. * * * The nation, for its safety, is entitled at all times to the best service of which its soldiers and all of its soldiers are capable.

"This praiseworthy statute also operates for economy and for the safety of our soldiers, and is a pledge to their relatives and friends that they shall be so cared for as will not only best protect their country, but also themselves, in times of peril, and that they will not be returned home dissolute in habits, addicted to drink, or victims of foul and infectious disease."

The provision of the Selective Draft Act making all male persons not alien enemies who are or have declared their intention to become citizens of the United States liable to military service conflicts with certain treaty provisions, among others the treaty between Spain and the United States of April 30, 1903, which exempts Spanish subjects from compulsory military service. In the case of *Ex parte Larrencea et al.*, 249 Fed. 981, it was held that the courts could not exempt subjects of Spain, a treaty occupying no position of superiority over an act of Congress and when inconsistent therewith the latest in point of time must control. The alien, however, though held for service by the municipal law, has available the remedy of appeal for diplomatic protection to his national government. I understand that the Department of State has granted the requests of several nations for the release of their nationals from the draft.

The validity of the Espionage Act was sustained in the case of the *United States v. Pierce et al.*, 245 Fed. 878. The court held that the first amendment to the Constitution which declares that Congress shall make no law abridging the freedom of speech or of the press, merely preserves the right to fairly criticize and comment, and does not justify lawlessness; and that the circulation of pamphlets containing false and misleading statements calculated to hinder the operation or success of the armed forces of the United States or to promote the success of its enemies cannot be justified as an exercise of freedom of speech or political argument.

In June, 1917, a young man named Samson who was just completing his junior year in Columbia University addressed an Emma Goldman meeting at which he was reported to have said that this is a "Dollar War," that "as much as we hate the German Kaiser, we hate still more the American Kaiser," and that there would be a draft revolution. The University authorities promptly notified him that on account of his utterances he would not be allowed to have further instruction in that institution. He made application to the New York Supreme Court to compel the University authorities to permit him to proceed with his studies, which application was denied in *Samson v. Trustees of Columbia University*, 167 N. Y. Supp. 202. In the opinion the court observed:

"By the common consent of civilized mankind through the ages, not the least important of the functions of a school or college has been to instill and sink deep in the minds of its students the love of truth and the love of country. We are a tolerant people, not easily stirred, prone to an easy-going indulgence to those who are opposed to the very essentials and vitals of our organized social life; but there must of necessity be a limit somewhere to the forbearance that can with safety be extended to the forces of destruction that hide behind the dishonestly assumed mask of the constitutional right of free speech.

"To attempt to state in general terms the difference between an honest and a dishonest exercise of the wholesome right of free speech that our Constitution so completely and properly protects would be as vain as it would be unprofitable here. In some cases—in many cases, perhaps—reasonable men would differ. But in some cases reasonable men could not differ, and I think we are dealing with such a case here. To counsel resistance to the draft ordained by lawful authority in accordance with our form of government is as culpable as it is cowardly; and one who does so is doing the work of the enemy without—thus far, at least—incurring the risks and braving the dangers that are the accepted lot of an enemy, who is recognized as such because he has the courage openly to avow his true allegiance.

* * * * *

"What I have to do with is the question of whether the plaintiff's continuance at Columbia University, with the inevitably close contact in which that would place him with impressionable young men of his own age, who might thus be inoculated by him with the poison of his disloyalty, is likely to constitute a menace to the University. I think it would, and that the defendant was well within its rights in refusing further to extend to him its privileges and opportunities."

Several decisions have been handed down dealing with the status and rights of alien enemies. In *Ex parte Graber*, 247 Fed. 882, the court held that the action of the President, through the officials designated by law, in ordering the summary arrest and detention of an alien enemy is conclusive, and not subject to judicial review on habeas corpus.

In the case of *United States v. Wursterbarth*, 249 Fed. 908, a proceeding for the cancellation of a certificate of citizenship, the court held:

"Where respondent, a native of Germany, was admitted to citizenship under Rev. St. 2165, requiring an applicant for admission to make oath that

he will support the Constitution of the United States, and that he absolutely abjures and renounces all allegiance to any foreign prince or sovereignty, proof that, when the United States and Germany engaged in war, many years later, respondent desired a German success, and recognized an allegiance to Germany superior to that due the United States, unexplained warrants cancellation of his certificate of citizenship, on the ground that it was procured by fraud, in that his oath to renounce allegiance to any foreign sovereignty was false, and excepted the land of his nativity." (Syllabus.)

In *Rothbarth v. Herzfeld*, 167 N. Y. Supp. 199, the Supreme Court of New York, following an unbroken line of authorities, held that a nonresident alien enemy may not prosecute an action in our courts during the war. The decision is based on grounds of public policy, which forbids the doing of acts that may be to the advantage of the enemy state by increasing its capacity for prolonging hostilities through additions to the credit, money, or other resources available to individuals in the enemy state. Also, that permission to prosecute would violate the provisions of the Trading with the Enemy Act. In the later case of *Arndt Ober v. Metropolitan Opera Co.*, 169 N. Y. Supp. 944, the same court distinguishes between a resident and nonresident alien enemy in this respect, and hold that the former has the right to sue in our courts.

In the case of the *Kaiser Wilhelm II*, 246 Fed. 786, a British corporation filed a libel against a vessel owned by a German corporation. The latter contended that the enforcement of libellant's claim would compel a violation of the German moratorium whereby payment of all indebtedness by German to British subjects was forbidden during the war. The District Court (230 Fed. 717) dismissed the libel, and the libellant appealed. Meantime the United States declared a state of war to exist between itself and Germany, and the libeled vessel was seized by our Government. The Circuit Court of Appeals reinstated the libel and retained jurisdiction of the case, observing that,—

"This vessel, now taken by the government as noted, may hereafter be lost, burned, or destroyed, and if the lien be not finally enforced against her in this proceeding, or the hold of the court upon her be surrendered, it is manifest that the North German Lloyd might after the war was ended, still remain liable for the repairs on the ship, no matter what became of her. The practical effect, therefore, of our dismissing this libel, might eventually work a hardship to the North German Lloyd. So, also, the changed situation makes the British libellant's nation and our own allies in this war, and it might well be regarded as a well-nigh hostile act on the part of the United States District Court to refuse to exercise its jurisdiction in behalf of a British citizen. * * * It is apparent, therefore, that no harm can be done to the two litigants or to the government by the lower court retaining jurisdiction of the libel for the present. If, as is no doubt the case, the counsel for the German claimant cannot at this time properly procure proofs and present his client's case, the court can, and no doubt will, delay action until this can be done. * * *

"In following this course, and protecting the rights of an absent German citizen while this country is at war with the Imperial Government of its country, we are impelled by three all-sufficient reasons: First, the innate sense of

fairness, decency, and justice, which respects the rights of an enemy; second, the broad principles of international intercourse, which lead courts and nations that believe in international rights to be the more careful to observe them toward belligerents; and lastly, because the awarding to this German citizen, with whom our country is at war, the careful preservation until times of peace of its rights, is in line with those high-ideals of Anglo-Saxon justice which led the British courts years ago, in *Re Boussmaker*, 13 Vesey 71, decided in 1806, to allow the claim of an alien enemy to be proved in time of war and the dividends held by the British court until peace. Indeed, the fact that our country is now at war with Germany is all the more reason why this court should most scrupulously award to this German citizen those international and equitable rights which no fair-minded people ever deny even to their enemies in times of war."

The "Trading with the Enemy Act," has been referred to in a number of reported cases, but I have found no important judicial pronouncement concerning it. In *Keppelman v. Keppelman*, 103 Atl. 27, the Court of Chancery of New Jersey, observed:

"I cannot, however, resist expressing my firm conviction that the act of Congress must be construed in the light of two purposes: (1) To absolutely prevent any act which would result in a detriment to the United States in the progress of the war; and (2) not to permit or compel any act which would result in an injury to an individual alien enemy, which act would in no wise benefit the United States in the progress of the war."

Philippine Laws and Decisions.

Joint resolution No. 7 adopted November 28, 1917, authorized the construction of a modern submarine and destroyer, which are to be offered to the President for service as he may require. Act No. 2780, approved May 29, 1918, authorized the issuance and sale of bonds of the Government of the Philippine Islands to the amount of ₱4,000,000 for defraying the cost of building the war vessels provided for in the above resolution. The destroyer, christened the "*José Rizal*," was recently launched at San Francisco.

Act No. 2757, approved February 23, 1918, penalizes the publication of libels (articles or caricatures to create sentiment favorable to the enemies of the United States or redounding to the dishonor of the latter) against the Government of the United States or of the Philippine Islands during the present war. Act No. 2715, amended by Act No. 2751, known as the "The Militia Act" establishes the Philippine Militia, which embraces every able-bodied male citizen of the Philippine Islands between the ages of 18 and 45 years, except certain exempt classes, and American citizens who may be enrolled or appointed in the National Guard.

Issues brought about by the European war have caused considerable litigation in this jurisdiction. The few cases I shall mention have been decided since our own country became a belligerent. In the case entitled *The Hamburg-American Line v. The Insular Collector of Customs*, civil case No. 15435 of the Court of First Instance

of Manila, the court sustained a demurrer to the complaint based on the ground that the plaintiff had not legal capacity to sue, being a non-resident alien enemy. In its order the court said:

“* * * The plaintiff is a German corporation and an alien enemy, as defined in the Trading with the Enemy Act. As the state of war between the United States and the German Empire existed at the time of the filing of the complaint, and as it is a well established rule of International Law that the courts of a belligerent country are closed to its enemies, it is unnecessary here to discuss whether actions pending at the outbreak of the war, and in which alien enemies are plaintiffs, should be dismissed, or whether the proceedings therein should merely be suspended. Where, as in the present case, the courts were closed to the plaintiff at the time of the filing of the complaint, there can be no question but that the action must be dismissed, and that such dismissal may be ordered upon the Court's own motion.”

In the case of *Merlo v. Carpi et al.*, civil case No. 15995, the Court of First Instance of Manila denied an application for a preliminary injunction to restrain the Alien Property Custodian from disposing of property belonging to an enemy person. The court entered an order as follows:

“The above entitled case is before the Court upon an application for a preliminary injunction restraining the local representative of the Alien Property Custodian from selling or otherwise disposing of the Tanduay Box Factory, the plaintiff alleging that he is the owner of the lease of said factory, having for valuable consideration obtained an assignment of the lease from its former owner, the enemy firm of Froehlich & Kuttner, under date of October 18, 1917.

“In the opinion of the undersigned, the application should be denied. Not only is the alleged assignment invalid under the Trading with the Enemy Act, but this Court is apparently also without jurisdiction over the subject matter of the action. The jurisdiction given the United States district courts in cases of this character seems to be exclusive.”

In the case of *Olsen and Beaumont vs. Fressel & Co.*, 16 Off. Gaz. 153, our Supreme Court had under consideration an application for a writ of mandate to compel a judge of the Court of First Instance to proceed with the trial of a case. The defendant presented a motion in the trial court to postpone the hearing “until a reasonable time after the conclusion of the present war” on the ground that its former manager, alleged to be an indispensable witness, was held as a prisoner of war in Russia. An order was entered postponing the trial for a period of 11 months during which time the presence of the witness or his deposition should be procured. The Supreme Court held the lower court fully justified in granting the said motion.

In the case of *Brandt, et al. vs. Behn, Meyer & Co., Ltd.*, 16 Off. Gaz. 1270, the Supreme Court had before it the question of whether the Court of First Instance

abused its discretion in dismissing an action for laches (failure to prosecute it with due diligence). In the opinion of the court said:

“The ‘unreasonable length of time’ mentioned by Section 127 of the Code of Civil Procedure is not absolute but relative. What would be an ‘unreasonable length of time’, within the meaning of the Code section under peace conditions, would not necessarily be an ‘unreasonable length of time’ under war conditions. While numerous cases can be found in which for a specific period of dormancy, as two, three, or four years, cases have been dismissed, such a classification would not be appropriate, when a war produces impossibility or impracticability of performance. Just as a foreign or international war will suspend the operation of the statute of limitations between the citizens of the countries at war so long as the war lasts, and just as the Federal Courts of the United States will suspend an action during the war when it is found that the plaintiff is an alien enemy, so should the courts permit litigants affected by the war, especially those who are mutually agreed, to continue an action for a period reasonable under the circumstances.

“The order appealed from is reversed and the case shall be returned to the court from whence it came to be restored to the calendar of the court.”