APPLICATION OF THE TRADING WITH THE ENEMY ACT IN THE PHILIPPINES

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When the United States declared war against Germany on April 6, 1917, it had no legislation upon its statute books dealing with the treatment of enemy property within its domain. The experience of the Powers already engaged in the conflict indicated that economic problems were involved and would be of tremendous importance in determining the outcome of the war.[1] A successful conduct of the war depended not alone upon manpower but also upon resources and supplies as instruments of war. The objective desired was to weaken the enemy and decrease his capacity for prolonging the hostilities. This was to be achieved by preventing the private resources of enemy nationals within the United States from reaching the enemy to augment his own resources. At the same time said properties may be availed of in aid of the war effort.

Shortly after the declaration of war with the German Empire, a committee was appointed, composed of representatives of the Department of State, the Department of Justice, the Treasury Department and the Department of Commerce to draft a bill for submission to Congress. The bill drafted by this Committee was introduced in the House of Representatives on May 25, 1917 by William C. Adamson of Georgia, Chairman of the House Committee on Interstate and Foreign Commerce. On October 6, 1917 the bill became a law by the signing of the President of the United States.[2]

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[1] Le Fevre, Charles H., *Introductory Chapter*, p. 7, Meares, Irredell, *Trading with the Enemy Act, Annotated*, (1924).

[2] Huberich, Charles H., *On Trading with the Enemy*, (1918) p. 46. As originally enacted, the general purpose of the Act, in so far as it related to the trade with enemies and to the control of their properties, were as follows:

1. To interdict all intercourse, commercial or non-commercial, with all persons who are enemies or allies of enemy within the meaning of the Act, and to prohibit the doing of acts tending to the financial benefit of such persons.

2. To leave unaffected the property and other civil rights of resident alien enemies, including corporations organized under the laws of any State of the United States, whose stockholders are wholly or in part alien enemies.

3. To conserve and protect through governmental agencies, and not confiscate, the tangible and intangible property of non-resident alien enemies, in such manner, however, that such property may not be used as the basis of credit in foreign countries by the enemy owner.

4. To leave in force the common law provisions regarding the effect of war on contract, statutes of limitations, rights to devises and bequests, and rights as parties to action, except in so far as the Act mitigates the rigor of the common law.

5. To provide for a liberal system of licensing transactions within the letter, but not within the spirit of the Act.

It is, however, with the third objective that this work is primarily concerned.

The Trading with the Enemy Act was enacted as a permanent piece of legislation to serve not only the immediate needs arising from the involvement of the United States in the first World War, but also to meet the exigencies of future wars. The Law was not re-enacted when the second World War broke out. This was not necessary for it automatically went into effect upon the declaration of the state of war with Japan.[3]

The Act, as passed on October 6, 1917, contained two kinds of provisions. Its general structure was in terms of permanent legislation. Section 2, in defining terms, refrained from reference to the war then in progress or to specific nations or fixed dates. For example, it provided that:

> "The words 'the beginning of the war' as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.
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> "The words 'end of the war,' as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of the war' within the meaning of this Act." [4]

Sections 3(a), (b) and (c) dealt, in like terms, with general procedure for trading under Presidential license in time of war. Section 5(b) dealt with the regulation of foreign exchange, coin, export, transfers of credit, etc. Section 6 authorized the President to appoint an official to be known as the "Alien Property Custodian." Section 9 provided for the assertion of property claims and debt claims on behalf of any person not an enemy or ally of the enemy against certain assets in the possession of the Custodian.

On the other hand, certain other provisions were, from the beginning, earmarked as temporary provisions. For example, Section 3(d) referred to certain censorship to be established "during the present war." Section 4(a) referred to certain German insurance

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[3] Cabell vs. Markham, 148 F. 2d 737, at 738: "The statute was not reenacted when the present war broke out; nor was that necessary, for it automatically went into effect again. This appears, for example from the definition of the phrase, "beginning of the war," in Section 2, 50 U.S.C.A. Appendix, Section 2 ("the day on which Congress has declared or shall declare war"); from Section 302 of Title III of Chapter 593 of Laws of the First Session of the 77th Congress, 55 St. L. p. 839, 50 U.S.C.A. Appendix, Section 617, which assumes that it had not been in force before December 8, 1941, and that it went into effect again at once thereafter; and because Section 5(b) was amended without mention of any other part. 55 St. L. 839, 840, 50 U.S.C.A. Appendix, Section 616."

[4] Sec. 2(c).

companies. Section 4(b) referred to "the present war." Similar references "to the present war" occurred in Sections 11, 12 and 14.[5]

[5] Markham vs. Cabell, 326 U.S. 404, 90 L. ed. 165, 172-173. Since its enactment, the Trading with the Enemy Act of October 6, 1917 was amended by the following statutes:

1. Act of March 26, 1918, 40 Stat. 459, amending the fourth paragraph of Section 12;
2. Act of April 23, 1918, 40 Stat. 535, continuing powers of subsection (b) of Section 5;
3. Act of September 24, 1918, 40 Stat. 966, amending subsection (b) of Section 5;
4. Act of November 4, 1918, 40 Stat. 1020, amending subsection (c) of Section 7;
5. Act of July 11, 1919, 41 Stat. 35, amending Section 9;
6. Act of June 5, 1920, 41 Stat. 977, amending Section 9;
7. Act of February 27, 1921, 41 Stat. 1147, amending subsection (b) of Section 9;
8. Act of December 21, 1921, 42 Stat. 351, amending section 9;
9. Act of December 27, 1922, 42 Stat. 1065, amending section 9;
10. Act of March 4, 1923, (Winslow Act), 42 Stat. 1511, amending Section 9 and adding Sections 20, 21, 22, 23 and 24;
11. Act of May 7, 1926, 44 Stat. 406, amending subsection (b) of Section 9;
12. Act of March 10, 1926, 45 Stat. 254 (Settlement of War Claims Act of 1928);
13. Act of February 21, 1929 (extending time for filing claims);
14. Act of June 11, 1929, 46 Stat. 6, amending subsection (a) of Section 26;
15. Joint Resolution of March 10, 1930, 46 Stat. 64, extending time for filing claims;
16. Act of March 9, 1933, 48 Stat. 1, amending subsection (b) of Section 5;
17. Act of March 28, 1934, 48 Stat. 509, amending subsection (a) of Section 24;
18. Act of June 18, 1934, 48 Stat. 978, amending subsection (b) of Section 24;
19. Act of August 24, 1937, 50 Stat. 748, amending subsection (e) of Section 9;
20. Joint Resolution of May 7, 1940, 54 Stat. 179, amending subsection (b) of Section 5;
21. Act of December 18, 1941, 55 Stat. 839 (First War Powers Act of 1941);
22. Act of March 8, 1946, 60 Stat. 50;
23. Act of March 16, 1946, 60 Stat. 182;
24. Act of August 8, 1946, 60 Stat. 925;
25. Act of August 8, 1946, 60 Stat. 944;
26. Joint Resolution of August 5, 1947, 61 Stat. 784;
27. Act of July 1, 1948, 62 Stat. 1218, amending Section 33; and
28. Act of July 3, 1948, 62 Stat. 1246, adding Section 39;
29. Act of September 29, 1950, 64 Stat. 1080;
30. Act of September 28, 1950, 64 Stat. 1079.

The most important of these amendments for the purposes of the present study are:

1. The First War Powers Act of 1941, Act of December 18, 1941, 55 Stat. 839 (Public Law 354, 77th Congress)
2. Public Law 322, 79th Congress (60 Stat. 50, 50 U.S.C.A. Appendix 32.)
3. Public Law 671 (60 Stat. 925, 50 U.S.C.A. Appendix 33 et seq.)
4. Act of July 3, 1948, 62 Stat. 1246 (62 Stat. 1246, 50 U.S.C.A. Appendix 39.)

I. PROBLEMS OF ENEMY CONTROL AS AFFECTED BY THE ADVENT OF INDEPENDENCE

The administration and disposition of enemy properties located in the Philippines present many complex problems arising from the unique relation between the Philippines and the United States of America. When the Pacific War broke out in December of 1941, the Philippines, although enjoying considerable autonomy preparatory to her complete independence in 1946, was still a part of the United States. By express provisions of the Trading with the Enemy Act of the United States,[6] the term "United States" includes the Philippines. Therefore, properties owned by enemies of the United States located in the Philippines were subject to seizure by the exercise of the war powers of Congress to the same extent as enemy properties located within the continental United States.[7] But before the Attorney General of the United States, to whom the functions of the Alien Property Custodian appointed for the First World War, were transferred,[8] could put up a branch office in the Philippines and vest enemy properties, or before an Alien Property Custodian could be appointed for World War II, the country was completely overrun by the Japanese invasion forces. For more than three years, the Philippines was an enemy occupied territory and, for the purposes of the Trading with the Enemy Act of the United States, the Philippines was an enemy territory and its inhabitants, enemies of the United States.[9] On January 14, 1942, General Ruling No. 10 was issued imposing a strict control over Philippine securities and impounding all Philippine paper currency within the United States.[10] "These measures, taken at the request of the Philippine Government, are designed to thwart any attempt by the Axis to dispose of looted Philippine assets in the United States. Simultaneously, the Philippine Government took action to prevent looted assets from being liquidated in markets outside the United States. It was pointed out that not only does this interfere with the Axis war effort but, in addition, it may contribute materially to minimizing Axis looting in the Philippines by removing incentive for such action."[11]

In October of 1944, General MacArthur, landed on Leyte and in January of 1945, the liberation forces hit the shores of Lingayen. By the middle of 1945, the campaign for liberation of the Philippines was well underway. With the final liberation of all portions

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[6] Sec. 2(c); Sec. 5(b) (3).

[7] Sec. 301, First War Powers Act, 1941, amending Sec. 5(b), Trading with the Enemy Act.

[8] E.O. No. 6694, May 1, 1934; E.O. No. 8136, May 15, 1939. The Office of the Alien Property Custodian for the Second World War was first established on April 21, 1942, 7 F.R. 2985, E.O. No. 9142.

[9] Sec. 2(a).

[10] Domke, Martin, *Trading with the Enemy in World War II*, (1943 Ed.), p. 185.

[11] Press Release of the Treasury Department, Federal Reserve Bank of New York, Circular No. 2361, quoted in Domke, op. cit., p. 185.

of the Islands practically assured, the Department of Interior of the United States [12] was actively preparing for the resumption of the United States Government activities in the Philippines. At the same time, the Alien Property Custodian, in conjunction with the Department of Interior, began to work out the details of setting up a Philippine office. In the meantime, however, the United States Army had to assume the task of enemy property control alone, with all other aspects of the functioning military government. While the campaign was still in progress, an Enemy Property Custodian was designated by the military authorities with instructions to take into custody all properties in reoccupied areas believed to be enemy-owned.[13] Military security had made such a procedure necessary. Enemy property control, however, was primarily an extra-military function and was recognized from the beginning as a temporary expedient, pending the re-establishment of the civil government.

In considering the establishment of a Philippine branch office, the Office of the Alien Property Custodian had to consult with the other United States Government agencies, particularly the Department of State, the Department of Interior and the War Department.[14] The Department of Interior was then performing the functions heretofore exercised in the Philippines by the United States High Commissioner to the Philippines. By an executive order dated September 16, 1942, the duties, powers and functions of the United States High Commissioner to the Philippines were transferred to the Secretary of Interior who continued as *ex-officio* High Commissioner until September 6, 1945, when a new High Commissioner was appointed. The Department of Interior, as the chief representative of the American sovereignty in the Philippines, was responsible for the organization and coordination of all United States governmental activities in the Philippines after liberation. In its plans, the Department of Interior had provided for the establishment of a Philippine branch office of the Alien Property Custodian as one of the ten operating branches of the United States Government within the organizational structure of the Office of the High Commissioner.[15] This provision was made because this office not only had the knowledge and experience with problems of enemy property but had, in addition, the necessary grant of powers. On the other hand, the State Department was primarily concerned with the effect of the vesting program in the Philippines upon the long standing historical and legal commitments respecting independence. In addition, so far as the pre-independence vesting program was concerned, the State Department requested adherence to the principles of the United Nations Declaration of January 5, 1943 wherein it was agreed that

[12] The Secretary of Interior was ex-officio High Commissioner to the Philippines by Executive Order dated September 16, 1942.

[13] USAFFE Regulations No. 90-1, March 23, 1945.

[14] Annual Report of the Office of Alien Property Custodian for fiscal year ending June 1946, p. 135.

[15] Ibid.

forced transfers of title to enemy nationals during the occupation would not be recognized.[16]

On September 12, 1945, shortly after the proclamation of V-J Day transferring army civil controls to the newly appointed United States High Commissioner in the Philippines, the Alien Property Custodian issued an order establishing a Philippine office. The President of the United States and the High Commissioner were in full agreement with this action.[17]

On October 26, 1945, the President of the United States issued a directive to the Alien Property Custodian directing him to vest title to all enemy properties in the Philippines and to make lawful dispositions of the same. The vesting program, however, of enemy properties located in the Philippines met with serious difficulties. Because the Philippines was within the theater of military operations, government records and records of title including records of the various offices of the Registry of Title, the Bureau of Lands, the Bureau of Customs, the Bureau of Commerce and the Securities and Exchange Commission, were mostly destroyed. This made investigations of ownership of enemy properties an extremely difficult task.

Within a few months, the Philippines was to become independent. The Independence Act provided for the relinquishment by the United States on July 4, 1946 of all rights of sovereignty in and over the territory of the Philippines, and of possession of all properties in the Philippines with the exception of certain military reservations, naval fuelling stations and designated properties suitable for diplomatic establishments.[18] Since the termination of the sovereignty of the United States would end any authority of the Custodian in the Philippines under the Trading with the Enemy Act and since properties vested in the Custodian were not excepted from the blanket transfer of United States properties, the conduct of the alien property program could not continue beyond July 4, 1946 without some further arrangements.

Both the Philippine Government and the United States Government recognized the need of continuing the vesting of enemy properties after independence. The central problem has been to determine what agency should be entrusted with this function after that day. Essentially, three plans had been considered: (1) the United States Government could continue to handle alien properties in the Philippines through the Office of the Alien Property Custodian; (2) the Alien Property Custodian's existing program and authority would be transferred to an autonomous United States agency in the Philippines; or (3) the United States would transfer vested properties and its control to the Republic of the Philippines.[19] There were doubts as to the legality of the third plan of transferring the control of enemy properties to the Republic of the Philippines. The

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[16] Ibid.

[17] Ibid., p. 136.

[18] Philippine Independence Act, (March 24, 1934), 48 Stat. 456.

[19] Annual Report, APC (1946), p. 140.

Republic of the Philippines was a new state that became a member of the family of nations only upon the recognition of her independence on July 4, 1946. It was not, therefore, a belligerent in the last war and, for that reason, it could not exercise the rights of a belligerent to seize the properties of an enemy. Technically, the government and citizens of Japan, Germany and Italy were not enemies of the new Republic. It did not even have its own Trading with the Enemy Act. On the other hand, its immediate predecessor, the Commonwealth Government, was a mere dependency of the United States and was not a full sovereign state in the international law sense. Only the United States, as a belligerent in the last war, could have seized and vested these properties in the Philippines.[20]

The problem of post-independence treatment of enemy properties was not a simple one. It was further complicated by certain interrelated problems arising from the needs of various United States rehabilitation agencies in the Philippines to acquire properties in the Philippines needed by them in the performance of their assigned functions. In addition, there were stocked up in the Philippines vast quantities of munitions, equipments and other properties for the American armed forces intended for use in the full scale invasion of the Japanese mainland from the Philippines. These military equipments and supplies had an estimated procurement cost of one billion dollars.[21] These properties needed by the American rehabilitation agencies in the Philippines and the military equipments and supplies for use in the Japanese invasion constituted categories of property entirely different in origin and use from those owned in the Philippines by the United States before the war and entirely outside of the contemplation of the transfer arrangements embodied in the Independence Act.[22] Some have interpreted the Independence Act as providing for the automatic relinquishment to the Philippine Republic of all the properties owned by the United States in the Philippines, with the exception of military reservations, naval fuelling stations and diplomatic and consular establishments. In the minds of others, this interpretation was questioned. Legislation was therefore necessary to clarify doubts created by new situations not anticipated at the time of the passage of the Independence Act.[23]

The Philippine point of view was to the effect that an amendment to the Independence Act was not required since the problem related merely to the settlement of property rights between the United States and the Philippines as contemplated in the Indepen-

[20] Cf. Statement of Ambassador McNutt: "The United States, as a belligerent in the recent conflict, exercised and is exercising its rights as such, which are recognized by international law, to seize the properties of enemy nationals wherever such properties can be located in areas of American sovereignty. This is not a right extended to non-belligerents, in an international sense, nor to non-sovereign entities. None but the United States could have seized these properties in the Philippines. Neither a national sub-division nor a dependency could exercise such rights." (Press Release, August 22, 1946, Statement by United States Ambassador Paul V. McNutt).

[21] House Report No. 2296, 79th Congress, 2d Session.

[22] Senate Report No. 1578, 79th Congress, 2d Session.

[23] House Report No. 2296, 79th Congress, 2d Session.

dence Act, which in Section 2 provides as follows: "That the property rights of the United States and of the Philippines shall be promptly adjusted and settled.[24] Early transfer of enemy properties to the Philippine Government was felt desirable because of the urgent need of the Republic to rehabilitate her war-torn economy. On the other hand, there may be possible claims to these properties by non-enemy persons and under the law,[25] the Custodian should retain said properties pending final judgment of the court. Then there were the claims of American creditors to whom the former enemy owners were indebted and who had looked upon the properties of their debtors for payment. Since the first World War, the United States had recognized the equities in favor of these creditors and had established a policy of allowing payment from vested properties of debts due and owing from their former owners.[26] The automatic transfer of vested properties to the Republic of the Philippines upon the proclamation of her independence would cut off the rights of those American creditors.

After prolonged and continued consultations and exchanges of views between the representatives of both governments, it was agreed that it would not be feasible for title to properties held by the Custodian to pass automatically to the Philippine Republic upon independence. A bill was then presented in Congress which contained the following major provisions: [27]

1. The Alien Property Custodian is directed to turn over all agricultural lands and properties in the Philippines now held by him, including the Davao lands, to the Philippine Government, subject to legal claims against these properties;

2. The President of the United States is authorized to turn over these former enemy properties to the Philippine Government immediately, without waiting for the settlement of claims, upon agreement of indemnification by the Philippine Government acceptable to the United States to satisfy claims;

3. The Alien Property Custodian is also authorized to turn over non-agricultural properties held by him upon certification that these properties are urgently needed by the Philippine Government. Such properties might include the former Japanese schoolhouse in Manila where the legislature is now meeting;

4. After all claims have been settled against all other former enemy properties which have not otherwise been transferred to the Philippine Government, the President of the United States is directed to transfer all such other enemy properties or proceeds thereof without further compensation to the Philippine Government;

5. The Alien Property Custodian is authorized to continue operations in the Philippines after independence to negotiate and settle

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[24] Statement of President Manuel A. Roxas quoted and embodied in Senate Report No. 1578, 79th Congress, 2d Session.

[25] Sec. 9(a), Trading with the Enemy Act.

[26] Miller vs. Robertson, 266 U.S. 243, 69 L. ed. 265, 271; Norris vs. Bergdoll, 19 F. 2d 232, 234.

[27] Senate Report No. 1578; House Report No. 2296.

claims against former enemy properties in accordance with the Trading with the Enemy Act of the United States.

6. The President of the United States is authorized in his discretion to dispose of all other properties held by the United States Government in the Philippines, other than diplomatic and consular establishments and others covered by the Independence Act, to the Philippine Government;

7. Agencies of the United States Government are granted the right to retain title to properties presently owned and to acquire new properties for discharge of Federal functions in the Philippines after the date of independence except in the instances of enemy properties which are otherwise provided for;

8. After July 4, 1946, the Courts of First Instance of the Republic of the Philippines are given the same jurisdiction as the federal district courts of the United States have over suits authorized under the Trading with the Enemy Act with respect to vested properties located in the Philippines.

The bill, as recommended by the Committee on Territorial and Insular Affairs of the Senate and the Committee on Insular Affairs of the House, was indorsed by the Philippine Resident Commissioner on June 20, 1946. It also had the approval of President Manuel A. Roxas.[28]

The bill was approved on July 3, 1946 and became Public Law No. 485, 79th Congress, 2nd Session, (60 Stat. 418) otherwise known as the Philippine Property Act of 1946.

II. THE PHILIPPINE PROPERTY ACT OF 1946

The Philippine Property Act of 1946 provided that the Trading with the Enemy Act of October 6, 1917, as amended, shall continue in force in the Philippines after July 4, 1946, and that all the powers and authority conferred upon the President of the United States or the Alien Property Custodian by the terms of the Trading with the Enemy Act with respect to the Philippines, shall continue after July 4, 1946 to be exercised by the President of the United States, or such officer or agency as he may designate.[29] Inasmuch as the Philippine Property Act of 1946 was approved on July 3, 1946, only one day before the granting of Philippine Independence, the immediate designation of the Alien Property Custodian was considered the only practicable means of continuing the vesting program. This did not however preclude the establishment at a later date of an independent agency. By Executive Order No. 9747 of the President of the United States dated July 3, 1946, Executive Order No. 9095 of March 11, 1942, establishing the office of the Alien Property Custodian, as amended, and Executive Order No. 8389 of April 10, 1940, as amended, relating to foreign funds control, were continued

[28] S.R. Rep. 1578, 79th Congress, 2nd Session. Also the letter of Resident Commissioner Carlos P. Romulo to Senator Millard Tydings, Chairman of the Senate Committee.

[29] Sec. 3.

in force in the Philippines after July 4, 1946, and all the powers and authority delegated by said Executive Order to the Alien Property Custodian and to the Secretary of the Treasury, respectively, after July 4, 1946, continued to be exercised in the Philippines by said officers, respectively.

On July 29, 1946 the United States Ambassador to the Philippines officially informed the President of the Philippines of the approval on July 3, 1946 of the Philippine Property Act and the issuance on the same day of Executive Order No. 9747 continuing the functions of the Alien Property Custodian and the Department of Treasury in the Philippines after independence. The Ambassador requested the assurances of the President that the Philippine Government would sustain within its jurisdiction the operation of the aforesaid law and executive order and the lawful acts of the officers and employees of the United States in the enforcement of the same.

On August 10, 1946 the Vice-President and concurrently Secretary of Foreign Affairs of the Philippines replied to the American Ambassador, gave the desired assurance [30] and further informed the American Ambassador of the enactment by the Congress of the Philippines of Republic Act No. 7 and Republic Act No. 8 implementing the provisions of the Philippine Property Act. Republic Act No. 7 provided for the establishment of the Foreign Funds Control Office under the Department of Finance with authority, during the existence of the national emergency resulting from the war or so long as it may be necessary in the public interest, to exercise financial control over, and to investigate, regulate, direct and compel, nullify, void, prevent or prohibit any holding of, or dealing in, or exercising of any right, power or privilege with respect to any property within the Philippines or any transaction involving such property in which any enemy country or national thereof has any interest.

Republic Act No. 8 on the other hand, authorizes the President of the Philippines to enter into such contracts or undertakings with the Government of the United States or its authorized representative or representatives for the purpose of effecting the transfer to the Republic of the Philippines under the Philippine Property Act of 1946 (Act of Congress of July 3, 1946) of any property, real or personal, or property rights or the proceeds thereof authorized to be so transferred under said Act, upon such terms and conditions as may be agreed upon between the President of the Republic of the Philippines and the Government of the United States or its authorized representatives.

On August 22, 1946 the first transfer agreement under the Philippine Property Act and Republic Act No. 8 was executed between the Alien Property Custodian represented by Mr. Roger E. Brooks, Manager, Insular and Territorial Offices of the Office of the Alien Property Custodian and President Manuel A. Roxas. In consideration of the sum of One Dollar ($1.00) and in further consideration of the agreement to indemnify the United States for certain claims, costs, and expenses of administration, made by the President of the

[30] Diplomatic note to Ambassador Paul V. McNutt, August 10, 1946.

Philippines, the Custodian transferred to the Philippine Government 9,975 shares of a par value of ₱100.00 of the capital stock of the Furukawa Plantation, 2,430 shares of a par value of ₱100.00 of the capital stock of the Ohta Development Co., Inc. and all the capital stock of the Gui Hing Plantation Co. The Furukawa Plantation Company and the Ohta Development Company, Inc. were the two largest Japanese agricultural corporations in the Philippines. They were organized prior to 1918 for the purpose of owning and operating hemp plantations. They provided about 40 per cent of the world's supply of hemp.

On October 14, 1946 the Philippine Alien Property Administration was formally established by Executive Order No. 9780, later superseded by Executive Order No. 9818 dated January 7, 1947. At the head of this office was the Philippine Alien Property Administrator appointed by the President of the United States. To the Administrator were transferred the powers, duties and functions of the Custodian with respect to enemy properties located in the Philippines.[31] Upon the request of the American Ambassador,[32] the Acting Secretary of Foreign Affairs on June 3, 1947 assured the American Embassy that

> "* * * in view of the provisions of Sections 3, 4, and 5 of the 'Philippine Property Act of 1946' (Public Law 485, 79th Congress, approved July 3, 1946), the terms of Executive Orders Numbers 9789 and 9818 are acceptable to my Government and that the Government of the Republic of the Philippines will sustain within its jurisdiction the operation of the said Executive Orders."

The Philippine Alien Property Administration continued to function in the Philippines up to June 29, 1951. By Executive Order No. 10254 of the President of the United States dated June 15, 1951,[33] it was abolished and its functions transferred to the Attorney General of the United States. All properties heretofore vested in or transferred to the Philippine Alien Property Administration were transferred to the Attorney General of the United States.

At present there is established in Manila a Philippine Office of the Office of Alien Property, United States Department of Justice, which took over the unfinished work of the Philippine Alien Property Administration in the Philippines.

III. WHO IS "ENEMY" WITHIN THE TRADING WITH THE ENEMY ACT

The term "enemy" for the purposes of the Trading with the Enemy Act is defined in said Act as

> "(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including

[31] Sec. 2, Executive Order No. 9818.

[32] Diplomatic note of Ambassador McNutt to Secretary of Foreign Affairs Quirino, March 13, 1947.

[33] F.R. Dec. 51-7057; filed June 15, 1951; 1:46 P.M.

that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

"(c) Such other individuals, or body or class of individuals, as may be natives, citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy'." [34]

The Act clearly recognizes residence and doing business in hostile territory as the principal test for determining enemy status for the purpose of trading. Section 2 (a) classifies as enemies the following:

1. A *resident* of enemy territory, that is, territory (including that occupied military and naval forces) of any nation with which the United States is at war;

2. A corporation incorporated in an enemy territory;

3. A non-resident of the United States doing business within an enemy territory;

4. A foreign corporation doing business within enemy territory.

The first two refers to enemies by reason of their residence in enemy territory; the last two, to "doing business within enemy territory." The nationality of the person is not determinative of his status as enemy for the purposes of the Trading with the Enemy Act. The criterion established by the Act follows the theory of the common law and the law of nations that enemy status for trading purposes should rest upon one's place of residence or place of business rather than upon his nationality.

The doctrine that place of residence and of conducting business is an essential test in the application of the rule of alien enemy was recognized in the United States as early as 1812, and by so eminent an authority as Chancellor Kent, in the case of Clarke v. Morey.[35] The plea in that case set up that the plaintiff was an alien enemy, to wit, a subject of Great Britain, with which the United States was at war, and had not been made a citizen of the United States by naturalization or otherwise, but entered and came into the United States and still remains therein without any letters of safe-conduct from the President of the United States, or any license to be, reside, or remain therein. To this the plaintiff demurred, and Chief Jus-

[34] Section 2, Trading with the Enemy Act, as amended.

[35] 10 Johns, 69.

tice Kent said that it would be presumed from the record that plaintiff came to reside here before the war, and therefore no letters of safe-conduct nor license from the President were required; that the license is implied by the law and the usage of nations; if he came here since the war, a license is also implied, and the protection continues until the Executive shall think proper to order the plaintiff out of the United States, but that no such order is stated or averred. He called attention to the fact that the Act of Congress of July 6, 1798, respecting alien enemies, granted permission to the alien to remain, though his sovereign be at war with us. "A lawful residence," he said, "implies protection and a capacity to sue and be sued. A contrary doctrine would be repugnant to sound policy no less than to justice and humanity." Further on, he added: "And it has now become the sense and practice of nations and may be regarded as the public law of Europe (the anomalous and awful case of the present violent power on the continent excepted) that the subjects of the enemy (without confining the rule to merchants), so long as they are permitted to remain in the country, are to be protected in their persons and property, and to be allowed to sue as well as to be sued." This decision seems to have stood ever since as the law.[36]

> "It is not the private character or conduct of an individual, which gives him the hostile or neutral character. It is the character of the nation, to which he belongs, and where he resides. He may be retired from all business, devoted to mere spiritual affairs, or engaged in works of charity, religion, or humanity, and yet his domicile will prevail over the innocence and purity of his life. Nay, more, he may disapprove of the war, and endeavor by all lawful means to assuage or extinguish it, and yet, while he continues in the country, he is known but as an enemy." [37]

In Taylor's International Public Law,[38] it is said:

> "Upon the outbreak of war the status of every resident of a hostile state is seriously affected by the event. In war as in peace the national character of a person is for many purposes determined by his domicile, that is, by his actual residence as qualified by his intention of there remaining. x x x Enemy character attaches to all persons domiciled in the enemy's country, although they may be neutrals in fact, or even loyal citizens of the country to which they belong. x x x As Lord Stowell expressed it: 'The character that is gained by residence ceases by non-residence. It is an adventitious character, and no longer adheres to him from the moment that he puts himself in motion bona fide to quit the country sine animo revertendi.'"

So, even an American citizen residing in Germany during the First World War was held to be an enemy within the meaning of

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[36] Heiler v. Goodman's Motor Exp. Van & S. Co., 105 Atl. 233, 3 A.L.R. 336, 339-340.

[37] 2 Wall. 105 (U.S.)

[38] Sec. 517.

the Trading with the Enemy Act.[39] In Kahn vs. Garvan,[40] it was held that by the rules of international law, citizens domiciled in enemy territory take on the status of enemies and that it was open to Congress of the United States under its war powers to declare, as it did in Section 2 of the Trading with the Enemy Act, the status of all citizens actually present in enemy territory, because, however blameless of any share in hostile acts, their property, if reduced to possession where they reside, by hypothesis falls within the power of the enemy government for such purpose as it may choose.

"Resident within the territory," as employed in the Act, connotes something different from mere living within the specified areas. It is rather indicative of a settled and permanent place of abode, volitionally acquired and voluntarily assumed. It is a habitation having domiciliary properties.[41]

In Josephberg vs. Markham,[42] it was held that a naturalized American citizen of Italian birth who temporarily returned to Italy in an attempt to regain his lost mental health and who was unable to return because of the war, was not a resident of Italy and an enemy foreign national or national of a designated enemy country. In MacGrath vs. Zanden,[43] the United States Court of Appeals for the District of Columbia Circuit held that a natural born female citizen of the United States who while temporarily in Germany was prevented from returning by World War II and married a German citizen subject to the understanding that she would retain her separate domicile and citizenship and would return to the United States after the end of the war was not a "resident within the territory of Germany." Because of the unusual circumstances in this case, the Court recognized the existence of a separate domicile of the woman separate from that of her husband, the Court remarking that the general rule that the domicile of a wife usually follows that of her husband is not an unyielding rule.

As a converse to the foregoing, subjects of a country with which the United States is at war residing in the United States are not enemies within the meaning of the Trading with the Enemy Act unless, of course, they have been included within the term "enemy" by a proclamation of the President pursuant to Section 2(c).[44]

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[39] Noble vs. Great American Insurance Co., 194 NYS 60, 200 App. Div. 733, affirmed 235 NYS 589, 139 NE 746; Miller vs. Paul (1925), 237 Ill. App. 166; Wirtele vs. Grant Lodge A.O.U.W. (1923), Ill. Neb. 302, 196 NW 510.

[40] 263 Fed. 909, 915.

[41] Sarthou v. Clark, D.C.S.D. Cal. (1948), 78 F. Supp. 139, 142; see also Josephberg v. Markham (1945), 152 F. 2d 644, 648-649; Vowinckel v. First Federal Trust Co., 10 F. 2d 19; Stadmuller Trust Co., 11 F. 2d 732, 734; McGrath v. Zanden, 177 F. 2d 649.

[42] 152 F. 2d 644.

[43] 177 F. 2d 649 (1949).

[44] Wolf vs. Cudahy Packing Co. (1919), 105 Kan. 317, 182 Pac. 395; Tortorillo v. Seghorn (1918), N.J. Eq., 103 A 393; Ober v. Metropolitan Opera Co. (1918), App. Div. 513, 169 NYS 944.

Thus, in Kaufmann vs. Eisenberg,[45] the New York Supreme Court, in a carefully reasoned opinion, held that, unlike the non-resident alien of enemy nationality, one legally residing in the United States was not to be considered as an enemy within the meaning of the Trading with the Enemy Act, in the absence of a Presidential proclamation to the contrary. This decision has not only been followed by numerous state court decisions, but the same view has also been adopted by Federal courts, especially Bernsheimer v. Vurpillot,[46] where the absence of the Presidential proclamation was held to be decisive to permit resident aliens of enemy nationality to institute and prosecute law suits in the courts of the United States during the war.[47] The Supreme Court of the United States upheld this position in Ex Parte Kawato.[48] In said case, the Supreme Court said:

> "x x x Section 2 of the Act defines the 'alien enemy' to which the Act applies as those residing within the territory owned or occupied by the enemy; the enemy government or its officers or citizens of an enemy nation, wherever residing, as the President by proclamation may include within the definition. Since the President has not under the Act made any declaration as to enemy aliens, the Act does not bar petitioner from maintaining his suit.
>
> This interpretation compelled by the words of the Act, is wholly in accord with its general scope, for the Trading with the Enemy Act was never intended, without Presidential proclamation, to affect resident aliens at all. x x x"

Furthermore, statements made on the floor of the House of Representatives by Representative Montague, the sponsor of the bill which later became the Trading with the Enemy Act, showed that it was intended not to regard resident nationals of enemy country as enemies within the meaning of the Act.[49]

In order, however, that aliens of enemy nationality may be regarded as residents of the United States, it is necessary that they comply with the requirement of residence, namely, that they have been legally admitted into the country. Residence presumes legal admittance.[50] Anyone who enters the country illegally cannot thereby acquire legal residence.[51] Accordingly, in Szanti vs. Teryazos,[52] an alien of enemy nationality who had been employed as a fireman on board a vessel of Greek registry and who had overstayed his shore leave of sixty days, was regarded as staying in the country illegally since that time. He was, therefore, a non-resident of the

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[45] (1942) 177 Misc. 939, 32 NYS(2d) 450.
[46] (1942) 130 F. 2d. 396.
[47] Domke, op. cit., pp. 56-57.
[48] (1942) 317 U.S. 69.
[49] 55 Cong. Rec. 4842, 4943 (1917).
[50] United States v. Shapiro (1942), 43 F. Supp. 927.
[51] United States v. Goldstein, 30 F. Supp. 771.
[52] 45 F. Supp. 618.

United States and an enemy within the meaning of Section 2 of the Trading with the Enemy Act.

A national of an enemy country residing in a neutral country is not an "enemy" within the meaning of the Act.[53] This is because it is residence in enemy territory, not his nationality, that determines his enemy status for the purpose of the Trading with the Enemy Act.

The Act also defines as enemy any person residing outside the United States or any corporation incorporated within any country other than the United States, *doing business within* an enemy territory.[54] These words are used in the sense of "doing business" within enemy territory by means of branches or agencies or in some similar manner. They do not mean doing business with a person residing in enemy territory. A person of any nationality resident outside of the United States but in non-hostile territory, doing business in hostile territory, is an enemy as regards the transactions relating to business carried on in a hostile territory, but not further or otherwise.[55]

The determination of the enemy character of corporations is much more complicated. The various Trading with the Enemy Acts of the First World War regarded three different factors as decisive tests in classifying bodies of persons as enemies: (1) organization under the law of an enemy state, (2) residence in enemy territory, and (3) control by enemies.[56]

As originally enacted, the Trading with the Enemy Act of the United States regards corporations as enemies if (1) incorporated within an enemy country; or (2) incorporated within any country other than the United States and doing business within an enemy country.[57] The employment of the words "incorporated within any country other than the United States" in Section 2(a) excludes from the definition of "enemy" all American corporations, even though doing business in enemy territory.[58] Similarly, under the Act as originally enacted and interpreted in the cases arising from the first World War, corporations organized in the United States were not deemed "enemies" simply because their directors or stockholders were "enemies" within the Act. Asst. Attorney General Warren declared during the hearings before the Sub-Committee to which the bill that later became the Trading with the Enemy Act, was referred for study, that:

> "We have specifically abstained in the bill from attempting to go behind the corporate charter. If the corporation is an

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[53] Clemens v. Perry (1930) Tex. Civ. App., 29 SW (2d) 529, reversed on other grounds 51 SW(2d) 26; Anno 148 A.L.R. 1423.

[54] Section 2(a).

[55] Huberich, Charles Henry, *The Law Relating to Trading with the Enemy Act*, (1918), p. 59.

[56] Domke, op. cit., p. 120.

[57] Section 2(a).

[58] Huberich, op cit., p. 63.

American corporation then it can do business in this country... In England they attempted to go behind the charter of an English corporation and they attempted to hold that an English corporation which was controlled by German stockholders, was an enemy within the purview of their Act, and they landed in inextricable confusion . . . Here we have solved that by saying we will not go behind the corporate charter, no matter how many German stockholders there may be." [59]

The enemy control test of determining enemy status of domestic corporations was expressly rejected by the Supreme Court in Behn, Meyer & Co. vs. Miller,[60] where the Court said:

"Section 7, subsection (c), was never intended, we think, to empower the President to seize corporate property merely because of enemy stockholders' interests therein. Corporations are brought within the carefully framed definitions of "enemy" and "ally of enemy" by the words: 'Any corporation incorporated within such territory of any nation with which the United States is at war (or any nation which is an ally of such nation) or incorporated within any country other than the United States and doing business within such territory.' And we find no adequate support for the suggestion that Congress authorized the taking of property of other corporations because one or more stockholders were enemies. Logically carried out, this view would have permitted the seizure of all property of companies incorporated by any associated power, e.g., Great Britain, solely because some German held one share of the many thousand. The result indicates that the premise is bad. What the President might do was plainly set down in well-considered words."

The decision in the Behn, Meyer & Co. case was followed three years later by the same Court in Hamburg-American Line Terminal and Navigation Co. vs. United States.[61] This case involved a New Jersey corporation the entire capital stock of which were owned by the Hamburg-American Line, a German corporation. In reversing the judgment of the lower court holding the New Jersey corporation an "enemy" because of the enemy ownership of all its shares, the Supreme Court said:

"The court below evidently proceeded upon the view that the property of appellant corporations should be treated as owned by an enemy because their entire capital stock belonged to a German corporation. And as the property was seized during the war with Germany it held there could be no recovery. Without doubt Congress might have accepted and acted upon that theory. It was adopted in The St. Tudo, Lloyd's Reports of Prize Cases, vol. 5, p. 198, and The Michigan, Lloyd's Reports

[59] Hearings before Sub-Committee on H.R. 4960, 189, quoted in Huberich, p. 67.
[60] (1925) 266 U.S. 457, 69 L. ed. 374, 388.
[61] (1928) 277 U.S. 138, 72 L. ed. 822.

of Prize Cases, vol. 5, p. 421. But Congress did not do so; it definitely adopted the policy of disregarding stock ownership as a test of enemy character and permitted property of domestic corporations to be dealt with as non-enemy. The prescribed plan was to seize the shares of stock when enemy owned rather than to take over the corporate property."

The problem arises in reverse where it is claimed that control by non-enemy stockholders should divest a corporation of its otherwise established enemy character. Rejection of such a claim would seem to follow from the rejection of the control test in any form.[62] So, it was held in H.P. Drewry S.A.R.L. vs. Onassis,[63] that it was not the domicile of the stockholder but the corporation that must control, and therefore a corporation registered in France (then enemy occupied) must be considered as an enemy as defined in the Trading with the Enemy Act, though the principal stockholder has fled to England.[64]

A trend toward the application of the control doctrine to the determination of the enemy character of corporations was manifest in trading with the enemy legislation of the second world war. The control test had been expressly adopted by the Trading with the Enemy Act of Great Britain of 1939, wherein it was provided that the expression "enemy" for the purposes of the Act meant: "any body of persons (whether corporate or unincorporate) carrying on business in any place, if and so long as the body is controlled by a person who, under this section, is an enemy." [65] Similar provisions are found in the Trading with the Enemy Acts of Canada, Australia, New Zealand and France.[66]

A similar trend in the United States may be said to have began with the enactment of the First War Powers Act, 1941, amending Section 5(b). Although the statutory definition of enemy in Section 2 of the Trading with the Enemy Act has never been amended, it was held by the Supreme Court of the United States in the comparatively recent case of Clark vs. Uebersee Finanz-Korp, decided December 8, 1947,[67] that to harmonize said section with the policy enunciated by Congress in the First War Powers Act, 1941, and Section 9(a), it must be applied in a manner different from that in which it was previously applied. The Court declared that "a more harmonious reading of Sections 2, 5(b) and 9(a) is had if the concept of 'enemy' or 'ally of enemy' is given a scope which helps the amendment of 1941 fulfill its mission and which does not make Section 9(a) for the first time in its history and contrary to the nor-

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[62] Domke, op. cit., pp. 132-133.

[63] 266 App. Div. 292, 42 N.Y.S. (2d) 74 (1943), cited in Domke, Martin, *Control of Alien Property*, (1947), p. 101.

[64] See also E.H. Mumm Champagne v. Eastern Wine (1943), 52 F. Supp. 167; The Rita Maesk, 52 F. Supp. 56; Rothchild v. Chemacid Societe Anonyme, 44 N.Y.S. (2d) 689.

[65] Section 2(1) (c).

[66] Domke, Martin, *Trading with the Enemy Act in World War II*, pp. 127-128.

[67] 92 L. ed. 148.

mal connotation of its terms stand as a barrier to the recovery of property by foreign interest which have no possible connection with the enemy." [68] The definition of enemy in Section 2 are "merely illustrative, not exclusionary."[69] To apply the doctrine followed in the Behn, Meyer & Co. case despite the 1941 amendment would be to adopt a construction so destructive of said amendment to Section 5(b) and must be rejected. On this point, the Court said:

> "The problem is not without its difficulties whichever way we turn. But we think that we adhere more closely to the policy of both § 5(b) as amended and § 9(a), if we do not carry over into the amended Act the consequences of Behn, M & Co. v. Miller, 266 U.S. 457, 69 L. ed. 374, 45 S Ct 165, supra.
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> "As we have observed, the scheme of the Act when Behn, M. & Co. v. Miller, was decided was to respect the corporate form, even though the enemy held all the stock of the corporate claimant. The 1941 amendment to § 5(b) reflected a complete reversal in that policy. The power of seizure and vesting was extended to all property of any foreign country or national so that no innocent appearing device could become a Trojan horse. Congress did not, however, alter the definitions of enemy or of ally of enemy contained in § 2. They remain the same as they were at the time Behn, M. & Co. v. Miller, was decided.
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> "Yet if the question were presented for the first time under the amended Act, we could not confine the statutory definitions of enemy or ally of enemy to the narrow categories indicated by Behn, M. & Co. v. Miller. To do so would be to run counter to the policy of the Act and be disruptive of its purpose. We are dealing with hasty legislation which Congress did not stop to perfect as an integrated whole. Our task is to give all of it—1917 to 1941—the most harmonious, comprehensive meaning possible. Markham v. Cabell, 326 US 404, 90 L ed 165, 66 S Ct 193, supra. So if the definitions contained in § 2 are to be harmonized with the policy underlying § 5(b) and § 9(a) of the amended Act, we would have to say that they are merely illustrative, not exclusionary. To do otherwise would be to impute to Congress a purpose to paralyze with one hand what it sought to promote with the other."

But what is the extent of enemy interest in a corporation necessary to constitute an enemy taint, what part of a friendly alien corporation's property may be retained where only a fractional enemy ownership appear" are questions, however, left undecided by the Clark vs. Uebersee case. These questions "must await legislative or judicial clarification." [70]

IV. PROCEEDINGS TO SECURE POSSESSION OF VESTED PROPERTIES

The Federal Supreme Court held in cases arising out of the First World War that in the light of emergency conditions, Congress

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[68] Ibid, at p. 153.
[69] Ibid, at p. 152.
[70] Ibid, at p. 153.

could and did authorize seizure of property thought to be enemy-owned on *ex parte* determination of the President or his designee.[71] The determination after investigation by the Administrator, the President's designee in the Philippines, as to the enemy character of the property vested by him is final and conclusive for the purposes of his right to take immediate possession.[72] There is no warrant for saying that the enemy ownership must be determined judicially before the property can be seized; and the practice has been the other way.[73] As one Court has said, previous initial hearing would have been "a fatuous procedural requirement in practice." [74] The demand by the Administrator for the possession, transfer, assignment or delivery to him of the property is peremptory in character and must be yielded to, whether right or wrong.[75] As Judge Learned Hand observed in Silesian-American Corp. vs. Markham,[76]

> "The power of the United States peremptorily to reduce to its possession and apply to its use, at moments critical in his tory, all property which lies within its power is not to be emasculated by delays of private litigation; the peril may be overwhelming, the need imperative It is enough that reparations will be available, where reparation is due; meanwhile the individual must comply with the immediate demand."

The effect of the demand, even though not complied with when validly made, operates at once as a seizure of the property demanded, notwithstanding the failure of those upon whom the demand is made to comply.[77]

To secure possession of vested property where one in actual possession refuses to turn over possession on demand of the Administrator, the latter may invoke the aid of the Courts of First Instance of the Philippines. These Courts have been conferred jurisdiction by Section 3 of the Philippine Property Act of 1946 to issue such orders as may be necessary and proper to enforce the Administrator's vesting order. This section is the counterpart provision in the Philippines of Section 17 of the Trading with the Enemy Act of which it is *mutatis mutandi* a verbatim copy.

To date there is no decision of any Philippine court interpreting the provisions of Section 3 of the Philippine Property Act. Section

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[71] Central Trust Union Co. v. Garvan, 254 U.S. 554; Stoehr v. Wallace, 255 U.S. 239.

[72] Central Trust Union Co. v. Garvan, 254 U.S. 554; Stoehr v. Wallace, 255 U.S. 239; Simon v. Am. Exchn. Nat. Bank, 262 U.S. 706; Com. Trust Co. v. Miller, 262 U.S. 51; United States Trust v. Miller, 262 U.S. 58.

[73] Stoehr v. Wallace, 255 U.S. 239, 65 L. ed. 614.

[74] Kahn v. Garvan, 263 Fed. 909, 917.

[75] Central Union Trust Co. v. Garvan, ibid.; Stœhr v. Wallace, ibid.; Salamandra Life Ins. Co. v. New York Life Ins. Co. (D.C.), 254 Fed, 852; Kahn v. Garvan, ibid.; Garvan v. $20,000 Bond, ibid.

[76] 156 F. 2d 793.

[77] In re Miller-Schaefer, (CCA) 281 Fed. 764, appeal dismissed in 262 U.S. 760; Kohn v. Kohn, 264 Fed. 253.

17, however, of the Trading with the Enemy Act has been construed in several cases in the United States.

Thus, an action instituted under Section 17 is a summary proceeding, ancillary to the capture of enemy property by the United States in time of war, to obtain possession of property which the Alien Property Custodian has determined to be enemy-owned.[78] It is a purely possessory action.[79] Questions as to title or interest in the property cannot be determined, but can be raised only by filing a claim and instituting the proceeding provided for in Section 9(a).[80] A decree for the Alien Property Custodian does not settle property rights finally, but merely gives him such custody of the property as would be gained by seizure, and merely attaches the property, to make sure that it is forthcoming, if finally condemned.[81] Said order is not a judgment which renders *res judicata* any question which may be raised in a suit brought for the return of the property under Section 9(a).[82] The action for possession cannot be defeated by defenses to the effect that the person required to deliver is the owner of the property and that said property is not enemy-owned.[83] Claimants to the property cannot intervene in said proceeding and litigate the question of ownership of the property in process of seizure, as this question can be litigated only after the demand of the Alien Property Custodian has been complied with, and then only by proceedings provided for in Section 9(a).[84] And in Salamandra Ins. Co. v. New York Life Ins. & Trust Company,[85] it was held that the determination of the Alien Property Custodian made in good faith entitles him to possession of alleged enemy property and such possession will not be interfered with by injunction.

An exception to the Administrator's right to take possession of vested property is provided for in Section 8(a) which authorizes "any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand", to continue "to hold said property, and after default, to dispose of the property in accordance with law", provided that if a surplus shall remain after the satisfaction of the mortgage, pledge, lien or other right in the nature of a security, the Administrator shall be notified and such surplus shall be held subject to his further order. The purpose of this section is to preserve the remedy of lieners in a limited class of cases, as in the case of bank loans secured by collateral, real estate mortgages, or pledged lien or right, which could

[78] Clark v. Lavino & Co., 72 F. Supp. 497.
[79] Commercial Trust Co. v. Miller, 281 Fed. 804.
[80] Garvan v. Commercial Trust Co. of New Jersey, 275 Fed. 841.
[81] Miller v. Kaliwerke Aschersleben Aklien, 283 Fed. 746.
[82] Miller v. Camp, 280 Fed. 520, affirmed 286 Fed. 525.
[83] Garvan v. Commercial Trust, *supra*.
[84] *Ibid*.
[85] 254 Fed. 852.

be disposed of on notice or on presentation.[86] Such liens are to be enforced in the ordinary way.[87] Disturbances of bank loans, secured by collateral, by any novel mode of liquidation and interference with foreclosure of ordinary mortgages might seriously interfere with normal financial operations.[88]

The Insurance Commissioner of the Philippines recently requested an opinion from the Secretary of Justice regarding a demand made upon him by the Philippine Alien Property Administrator to turn over possession of certain securities deposited with him by foreign insurance companies as a prerequisite to the issuance of license to said companies to engage in business in the Philippines. It appears that before the outbreak of the last war the Nord-Deutsche Versicherungs-Gessellschaft, a corporation organized in accordance with the laws of Germany, the Taisho Marine and Fire Insurance Co., Ltd. and the Yokohama Fire and Marine Insurance Company, both organized in accordance with the laws of Japan, deposited with the Insurance Commissioner of the Philippines certain securities as a prerequisite to their being issued license to engage in business in the Philippines.[89] On July 9, 1947, the Phlippine Alien Property Administrator issued Vesting Order No. P-262 vesting all known properties of the Nord-Deutsche Versicherungs Gesselschaft in the Philippines including the securities deposited with the Insurance Commissioner. Similar vesting orders were issued by the Administrator with respect to the Taisho Marine and Fire Insurance Company and the Yokohama Fire and Marine Insurance Company.[90]

After the vesting of the properties of the aformentioned companies, including the securities deposited by them with the Insurance Commissioner, the Administrator made a demand upon the Commissioner for delivery of possession of the securities to him. The Commissioner, however, contended that until his office is fully satisfied that the three companies which have ceased to do business in the Philippines being enemy companies, have no further liability under any of their policies in the Philippines, he could not turn over the securities deposited with him to the Administrator. The Commissioner relied on Section 179 of the Insurance Law to justify his action, which section in part provides: "x x x in the event of any company ceasing to do business in the Philippine Islands the securities aforesaid shall be returned upon the company's making application therefore and providing to the satisfaction of the Insurance Commissioner that it has no further liability under any of its policies in the Philippine Islands."

Similar questions have arisen in the United States and the decisions of the courts, including the Supreme Court of the United States, have been uniformly against the position taken by the Insu-

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[86] Garvan v. Chesapeake & Ohio Ry. Bond (unreported) but affirmed in Garvan v. Central Trust Co., 254 U.S. 554.

[87] Garvan v. $50,000 & $25,000 (unreported), but affirmed by CCA, 265 Fed. 477.

[88] *Ibid.*

[89] Section 178, Insurance Law.

[90] Vesting Order No. P-342, August 29, 1947, and Vesting Order No. P-361, September 11, 1947 and October 7, 1947.

rance Commissioner.[91] In Garvan vs. $20,000,[92] the Munich-Reinsurance Company, the Frankfort General Insurance Company, the the Allianz Insurance Company, all German companies, deposited securities with trustees in conformity with similar requirements of the laws of Connecticut and Massachusetts. After the outbreak of the first World War, a demand was made by the Alien Property Custodian to the trustees to whom the securities were deposited for the delivery of said securities. Upon the trustee's refusal to turn over possession of the securities, the Alien Property Custodian filed libels of information against the securities in question, praying the Court to order the United States Marshall to seize the same and deliver them to him to be held and applied in accordance with law. Both the District Court and the Court of Appeals granted the decree of possession prayed for, holding that the trustees were not lien holders within the meaning of section 8 of the Trading with the Enemy Act and that the rights of the policy holders and creditors were fully protected by other sections of the same Act. The Supreme Court affirmed this decree.[93]

In accordance with these decisions of the Courts of the United States, it is submitted that the Insurance Commissioner may not properly refuse the Adminstrator's demand for possession of the securities deposited with his office by the Japanese and German corporations before the war in compliance with the requirements of Section 178 of the Insurance Law. Neither may he require the Administrator to prove as a *sine qua non* to such delivery that the insurance company has no further liability under any of its policies in the Philippines.

If the properties vested consists of shares of stock or other beneficial interest in any corporation, it shall be the duty of the corporation issuing such shares or any certificates to cancel upon its books all shares of stock or other beneficial interest standing upon its books in the name or held for the benefit of any person or persons who shall have been determined by the Administrator, after investigation, to be an enemy or ally of enemy, and which shall have been required to be transferred to the Administrator or seized by him, and in leiu thereof to issue certificates or other instruments for such shares, or other beneficial interest to the Administrator or otherwise, as the Administrator shall require.[94] To require the Administrator to surrender first the certificates of stock before the corporation cancels the certificates in the name of the person determined to be an enemy and issues new certificates to the Administrator, would be to frustrate the purpose of the law. The Administrator may therefore require issuance to him of certificates for stock owned by an alien enemy vested by him, without presentation for cancellation of the outstanding certificates.[95]

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[91] Garvan v. $100,000 Bonds, 265 Fed. 481; Garvan v. $20,000 Bonds, 265 Fed. 477; Central Union Trust Co. v. Garvan, 254 U.S. 554.

[92] Supra.

[93] Central Union Trust Co. vs. Garvan, 253 U.S. 554.

[94] Section 7 (c), Trading with the Enemy Act, as amended.

[95] Garvan v. Wireless Tel. Co., 275 Fed. 486; Garvan v. Certain Shares Int.

If an enemy is an heir, testate or intestate, or a legatee, to certain properties left by a deceased person, the practice followed by the Philippine Alien Property Administrator is to vest not the *res* but the right, title or interest of the enemy to said properties. In such event the administrator would be merely substituted for the enemy heir or legatee and would be entitled only to what said heir or legatee would have received in the testate or intestate proceedings to settle the estate of the deceased. A "right, title and interest" vesting would avoid conflict with the probate court with respect to possession of the properties since what has been vested by the Administrator is not the *res* or the properties themselves but merely whatever the enemy would be entitled to. And since determination of the quantum of the interest due the enemy and vested by the Administrator would enable the Court to proceed with the settlement of the estate, there would be no immediate need for the Administrator to obtain possession of the properties of the deceased. Said properties will remain in *custodia legis* and, upon the final settlement of the estate, the Court shall decree to the Administrator what would have corresponded to the enemy heir.

Suppose the heir or heirs to the properties of a deceased are enemies and there are no creditors of the estate, would the Administrator be justified in *"res vesting"* said properties? It is believed that in such event, *"res vesting"* may be properly resorted to. The rights to the succession of a person are transmitted from the moment of his death.[96] As the Supreme Court of the Philippines has held in Ilustre vs. Frondoza,[97] the property belongs to the heirs at the moment of the death of the ancestor as completely as if the ancestor had executed and delivered to them a deed for the same before his death. Since the heirs have become actually the owner of the properties left by the deceased, then the Administrator may vest not only their right, title and interest, but the res itself. In the event that there would appear later lawful creditors, they may file their claim with the Administrator as debt claimants under Section 34 or they may compel ordinary judicial proceedings for the settlement of the properties of a deceased person as provided for under the Rules of Court. Since the heirs only get a residue of the properties after the payment of all creditors, it is submitted that said creditors may be regarded as having a lien upon the properties.

V. PROPERTIES SUBJECT TO VESTING

Section 7(c) of the Trading with the Enemy Act empowered the President to require the transfer or conveyance to the Alien Property Custodian of any property determined by him to be owned or held for the account of an enemy or ally of an enemy without license. The powers conferred upon the President by this section had been

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Agr. Corp., 276 Fed. 206; Commercial Trust v. Miller, 281 Fed. 804, affirmed 262 U.S. 51; Silesian American Corp. v. Clark, 332 U.S. 469, 92 L. ed. 141; Columbia Brewing Co. v. Miller 281 Fed. 289.

[96] Article 777, Civil Code.

[97] 17 Phil. 321.

delegated by him to the Alien Property Custodian. This delegation of authority was sustained by the Supreme Court in United States vs. Chemical Foundation [98] as a valid delegation of power in view of the explicit provision of Section 5(a) to the effect that the "President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct." Personal determination of the President is not required.[99] By an amendment to Section 7(c) approved on November 4, 1918,[100] direct seizures of enemy properties by the Alien Property Custodian was authorized. Said amendment in part provides: "or the same may be seized by the Alien Property Custodian."

Enemy properties subject to seizure under any above cited provision includes all kinds of properties, tangible or intangible.[101] The intent of the law to include all kinds of properties within the ambit of the war power is clearly manifest in the amendment to Section 7(c). Section 7(c) of the Act as originally enacted merely referred to "money or other property." To avoid any doubts that choses in action, shares of stock, patents, copyrights and other intangible properties were intended to be included in the phrase "money or other property", Section 7(c) was amended to read:

> "(c) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefore, and rights to apply for the character and description owing or belonging to or held for, by, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian: and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this Act."

So in American Exchange Nat. Bank v. Garvan,[102] it was held that under Section 7(c) the Custodian had authority to seize a debt owing to an alien enemy. To the same effect was the decision of the District Court of New York in Kohn v. Jacob & Josef Kohn.[103] By the word debt is meant a simple indebtedness, without reference to the time of payment. The term "debt due" as used in Section 7(c) does not mean debt "matured." Congress intended that the Alien Property Custodian should be given information as to all debts to an enemy whether they had matured or not.[104]

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[98] 272 U.S. 1, 71 L. Ed. 131.
[99] Stoehr v. Wallace, 255 U.S. 239.
[100] 40 Stat. L. 120.
[101] Garvan v. Marconi Wireless Telegraph Co. of America, 275 Fed. 486.
[102] (1921) 273 Fed. 43, affirmed (1922) 260 U.S. 706.
[103] (1920) 264 Fed. 253.
[104] Rumely v. U.S., CCA N.Y. 1923, 293 Fed. 532, cert. denied 263 U.S. 713.

In Miller v. Kaliwerke Aschersleban Aktien Gassellschaft,[105] it was held that shares of stock standing on the books of an American corporation in the name of an enemy may be seized by the Alien Property Custodian. In Kahn v. Garvan,[106] it was also held that the equitable interests of enemies in a trust fund in personal property may be seized. Property hald by a trustee under a will for the benefit of an alien enemy may also be seized.[107]

Since the enactment of the First War Powers Act, 1941, amending Section 5(b) of the Trading with the Enemy Act, control over enemy properties are being effectuated by means of "vesting orders" executed pursuant to Section 5(b) and the various executive orders issued by the President under authority of said section. Enemy properties are now "vested", and *"vesting"* is the term now used in lieu of the first World War term *"seizure"*. Vest, according to Ballantine's Law Dictionary means "to give an immediate fixed right of present or future enjoyment." The term "vest" however is equivalent to seize as hithertofore used in connection with respect to taking of enemy properties by the Custodian.[108] Considering the nature and extent of interest acquired in enemy properties by the Custodian acting on behalf of the United States government, there is no doubt that "vest" is a more appropriate term.

Vesting Orders issued by the Alien Property Custodian are published in the Federal Register, while those issued by the Philippine Alien Property Administrator are published in the Official Gazette. They become effective from the date of their filing with the Official Gazette or the Federal Register.[109]

Generally, there are two important classes of vesting: "res" vesting and "right, title and interest" vesting. In "res" vesting the "res" of the property is vested. In "right, title and interest" vesting, it is merely whatever "rights, title and interest" the enemy has in a certain property that is vested. The latter type of vesting therefore is resorted to where the enemy national's interest in a property is less than the absolute title to the property as where the enemy is merely the beneficiary under an express trust, a vendor-a-retro with right to repurchase the property, a usufructuary, a lessee, a mortgagee or other lien, an heir where the testate or intestate estate has not yet been settled.

In cases of corporations what may be vested may be the properties owned by the corporations in a "res" vesting order. This is usually resorted to when 100% of the shares of stock of the corporation are known to be owned or controlled by the enemy. Most corporations, however, may have their shares owned by persons of different nationalities, some enemies, others non-enemies. In cases like these, "share" vesting is resorted to. This means that what is vested

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[105] (1922) 283 Fed. 746.

[106] (1920) 263 Fed. 909.

[107] Keppelmann v. Palmer (1919) 108 A. 432 reversing 105 A. 140, cert. denied 252 U.S. 581.

[108] See In Re Oneida Nat. Bank & Trust Co. of Utica, 53 NYS 2d 416.

[109] §§ 611.1.; 504.1. 8 CFR (1949 ed.) 259, 373.

are the shares of stock owned by the enemy, the Philippine Alien Property Administrator being then substituted as stockholders of the corporation. No change in the title to the properties of the corporation which continues to exercise the same rights over them as before. It is otherwise when the properties of an enemy controlled corporation are vested. In addition to vesting the shares owned by the enemy in a domestic corporation, the Custodian or the Administrator as the case may be, may undertake to supervise the operation of the corporation by executing "supervisory orders."

There is one important distinction between seizure of enemy properties during the first World War and vestings during the second World War. During the second World War as has already been pointed out, "any property or interest of any foreign country or national thereof" [110] may be vested. The property of all foreign interests was placed within the reach of the vesting power not to appropriate friendly or neutral assets but to reach enemy interest masquerading under innocent fronts.[111]

VI. TITLE TO VESTED PROPERTIES

When enemy property is vested, title to the same passes to the United States [112] The Alien Property Custodian,[113] in the Philippines, the Philippine Alien Property Administrator, holds full and complete title to vested enemy property on behalf of the United States, without any beneficial interest remaining in the former owner. He may deal with such property, including selling it, in any manner appropriate to the interest of the United States.[114] In other words, the former enemy owner is completely divested of every right in respect of property vested as title to the same passed to the United States.[115]

Recently, the Supreme Court of the Philippines had occasion to observe in Miguel Socco Reyes v. Philippine Alien Property Administrator et al,[116] that title to vested properties passed to the United States and that said properties ceased to be owned by the former enemy owners. In this case, the court said:

> "* * * * The Philippine Alien Property Administrator was not a debtor of Teizo Mori, because the latter had been divested of any title or interest in the properties formerly owned by him and registered in his name after the vesting order No. P-7 had

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[110] Section 5(b).

[111] Clark v. Eubersee Finanz-Korp, 92 L. ed. 148, 151.

[112] Munich Reinsurance vs. First Reinsurance Co. of Hartford, 6 F. 2d 742, appeal dismissed 273 U.S. 266.

[113] Now, the Attorney General.

[114] U.S. v. Chemical Foundation, 272 U.S. 1; U.S. v. Borax Consol. D.C. Cal. 1945, 62 F. Supp. 220.

[115] Balkan Nat. Ins. Co. v. Comm'r of Int. Revenue, CCA 1939, 101 F. 2d 75; also Sorenson v. Sutherland, 27 F. Supp. 44, reversed on other grounds 109 F. 2d 714, aff'd 311 U.S. 394; Vahle v. Markham (1946), 5 F.R.D. 315; Cummings v. Deutsche Bank 81 L. ed. 345, 300 U.S. 115, 120; 3 Hyde, *International Law*, p. 1731.

[116] G.R. No. L-2879, promulgated April 21, 1950.

been executed, and because the said properties after the Vesting Order No. P-7 had been executed, and after they had been sold, the proceeds realized from the sale thereof, belonged to the Government of the United States of America."

It is apparent, from the provision of Section 39 of the Trading with the Enemy Act [117] that Congress has adopted a more stringent policy with respect to German and Japanese properties vested during the Second World War than that followed during the first World War. Congress has made it clear that no German or Japanese properties vested after December 17, 1941 shall be returned to the former owners and that the United States shall not pay compensation for any such property or interest therein. Section 39 in full provides:

"No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. The net proceeds remaining upon the completion of administration, liquidation, and disposition pursuant to the provisions of this Act of any such property or interest therein shall be covered into the Treasury at the earliest practicable date. Nothing in this section shall be construed to repeal or otherwise affect the operation of the provisions of section 32 of this Act or of the Philippine Property Act of 1946."

It will be noted that this section recognized and confirmed earleir Congressional disposition of vested properties located in the Philippines under the Philippine Property Act of 1946.

The legislative history of Section 39 has been discussed in Schill v. McGrath.[118] In this case, it was said:

"The policy behind the enactment of Section 39 as stated by the House Committee, H.R. 976, pp. 2-3, is as follows: 'The policy of nonreturn and noncompensation is a sound public policy which should be enacted into law. It does not violate any concepts of international law or international morality. No essential difference exists between private property and public property in the case of Germany and Japan. For several years before World War II while Germany and Japan were preparing to make war upon the United States, property owned in the United States by the citizens of both of these countries was subject to rigid control of their respective governments. While the fiction of private ownership was retained, actually property of German and Japanese nationals in the United States was widely used to accomplish the national objectives of those countries.'

[117] Act of July 3, 1948, 62 Stat. 1246, 50 U.S.C.A. App. 2011.
[118] 89 F. Supp. 339, 343.

"It was thought that the enemy government had the duty to reimburse its nationals for loss due to its own action in waging war (94 Cong. Rec. I, supra, pp. 551, 556, 564; Hearings, supra, p. 22), and that it was morally proper for the United States Government to take the property of enemy nationals and apply it to the legitimate claims of American nationals. The view of the Justice Department on the bill was that the property having vested, is the property of the United States and 'that the *former owners* of such property have no claim for its return.'

"Section 39 might be considered harsh, and innocent persons may suffer because of it. Indeed, it has even been suggested by one Representative that the bill could be characterized as 'legalized robbery'. The Government, however, has the right under the war power clause of the Constitution, Art. 1, Sect. 8, Cl. 11, to confiscate property of nationals of an enemy nation, and this right is not limited by the due process or just compensation clause. See Hearings, supra, pp. 19-20."

So, while it may be admitted that the original purpose of the Trading with the Enemy Act was merely conservation of enemy properties during the period of the war and that said properties were held in trust for their former owner, the enactments of Congress during the second World War, especially the War Claims Act of 1948 and the Philippines Property Act of 1946 fairly indicated a different disposition of enemy properties seized during the second World War. Enemy properties were to be retained by the United States by way of indemnification and reparations. Those located in the Philippines were to be conveyed to the Philippine Republic as part of her over-all plan of rehabilitation. These measures taken by Congress appear confiscatory. Mr. Hyde, however, opines that similar measures are not necessarily confiscation since the former owners have still recourse against their own government for indemnification.[119]

VII. SUITS FOR RECOVERY OF VESTED PROPERTIES

The dominant purpose of the Trading with the Enemy Act was to sequester under government control the property of alien enemies and other nationals, so that such property may not be employed in the interest of the enemy government and against the interest of the United States.[120] To accomplish this purpose, the Act conferred on the Custodian authority to seize summarily property upon his determination that it was enemy owned, and such seizure was lawful even though the determination was erroneous.[121] But in thus authorizing the seizure of property as a war measure,Congress did not attempt the confiscation of the property of citizens or alien friends.

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[119] 3 Hyde, *International Law*, p. 1736, 1737.

[120] Kœhler vs. Clark, CA Or. 1948, 170 F. 2d 779.

[121] Becker Steel Co. vs. Cummings, 296 U.S. 74, 79, citing Central Union Trust vs. Garvan, 254 U.S. 554, Stœhr vs. Wallace, 255 U.S. 239; Commercial Trust Co. vs. Miller 262 U.S. 51.

> "With enemy-owned property seized by the Custodian, it has been held, the United States may deal as it sees fit, White vs. Mechanics Securities Corp., 269 U.S. 283; but it has no latitude in respect of other property, of an American citizen." [122]

Nevertheless, mistakes were bound to happen and properties of citizens and friendly aliens seized as enemy owned or controlled properties.[123] The Act, therefore, provided for an adequate remedy for the invasion of these property rights otherwise it would be found to be unconstitutional. Referring to the rights of citizens and friendly aliens, the Court said in Standard Oil Co. (N.J.) vs. Markham: [124]

> "The existence of a right upon the claimant to regain his wrongfully seized property, and to do so completely is essential to the constitutionality of the Act."

To safeguard then the rights of citizens and friendly aliens, the Act, both in its original and in the amendatory provision, permits the filing of suit for the recovery of any vested or seized property unembarrassed by the precedent executive determination of its enemy character.

Section 9(a) provides that "any person not an enemy or ally of an enemy" claiming any interest, right or title in any vested property or property transferred to the Custodian may file a suit in equity against the Custodian to establish his interest, right or title to the property. Upon the filing of such suit, it shall be the duty of the Custodian to retain the property in his possession to await the final judgement of the court.

It is already well-settled that a suit against the Alien Property Custodian or against his successor in office, the Attorney General, involving vested properties is a suit against the United States itself.[125] Although the nominal party is the Alien Property Custodian, the real party in interest is the United States. So, the fact that it is brought against him is of little consequence, "since the question whether the United States is a party to a controversy is not determined by the mere nominal party on the record but on the question of the effect of the judgment or decree which can be entertained." [126] As the

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[122] Henkels vs. Sutherland, 271 U.S. 298, 301.

[123] Central Union Trust vs. Garvan, supra.

[124] 57 F. Supp. 332, 334.

[125] Banco Mexicano de Commercio e Industria vs. Deutsche Bank, 263 U.S. 591, 68 L. ed. 465; Cummings vs. Deutsche Bank, 300 U.S. 155, 81 L. ed. 545; Henkels vs. Sutherland, 271 U.S. 298, 70 L. ed. 953; Becker Steel vs. Cummings, 296 U.S. 74, 80 L. ed. 54; Synthetics Patents vs. Sutherland, 22 F. (2d) 491; Cummings vs. Hardee, 102 F. (2d) 622; Pfiueger vs. U.S. (1941), 121 F. (2d) 732; cert. den. in 314 U.S. 617, 86 L. ed. 497; Becker Steel Co. vs. Cummings, 16 F. Supp. 601; The Pietro Campanella, 47 F. Supp. 374; U.S. vs. The San Leonardo, 51 F. Supp. 107; Sorenson vs. Sutherland, 27 F. Supp. 44; Standard Oil Co. of New Jersey vs. Markham, 57 F. Supp. 332.

[126] Boeing Air Trans. Co. vs. Farley (1935), 75 F. (2d) 765, 768; Pennsylvania Air Lines vs. Farley, 75 F. (2d) 769 cert. den. 294 U.S. 728.

action is against the United States, suitor must show that all the terms and conditions under which the United States have consented to be sued under the statute have been complied with, though the conditions are purely formal.[127] Failure to comply with all the statutory conditions is fatal to the maintenance of the action.[128]

So, before an action for the return of vested property could be instituted in court, it must be shown that a notice of claim "under oath and in such form and containing such particulars" as the custodian shall require had been duly filed with the Custodian.[129] The action can only be filed "in the District Court of the United States for the District of Columbia or in the District Court of the United States for the district in which the claimant resides, or, if a corporation, where it has its principal place of business." [130] The Courts designated must be regarded as exclusive of all others.[131]

Only persons who are not enemies or allies of enemies may file a suit for recovery of vested properties. An enemy or ally of an enemy may not bring such an action. His claim to his former property can only be settled as Congress may decide.[132]

Prior to the decision of the United States Supreme Court in Clark vs. Uebersee Finanz-Korp promulgated December 8, 1947, it was not clear whether or not nationals of foreign countries whose properties have been vested under Section 5(b) may file suit for revery of their property. The Alien Property Custodian took the position that because Section 5(b) permitted the vesting of properties of "any foreign countries or any national thereof," the intention of Congress was to withdraw from foreign nationals the right to sue granted by Section 9(a). To avoid conflict with the constitutional provision against the taking of property of friendly aliens without just compensation, which such a construction would raise, the Custodian suggested that a claim for just compensation by way of suit against the United States in the Court of Claims would be the proper remedy.

This interpretation of Section 5(b) and 9(a) by the Custodian was repudiated by the Supreme Court in Clark vs. Uebersee Finanz-Korp.

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[127] Ritter v. U.S., 28 F. 2d. 265; Cheatam v. U.S., 92 U.S. 85, 23L. ed. 561; Kings County Savings Institution v. Blair, 116 U.S. 200, 29 L. ed. 657; Rock Islands, Arkansas & Louisiana Railroad Co. v. U.S., 254 U.S. 141, 65 L. ed. 188; Baltimore & Ohio R.R. Co. v. U.S., 260 U.S. 565, 67 L. ed. 406.

[128] Rodinciuc v. U.S., 74 F. Supp. 284; Schillinger v. U.S., 155 U.S. 163, 39 L. ed. 108; Banco Mexicano de Commercio e Industria v. Deutsch Bank, 289 F. 924, affirmed 263 U.S. 591, 68 L. ed. 465; Upchurch Packing Co. v. U.S., 151 F. 2d 983, cert. den. 327 U.S. 803, 90 L. ed. 1028; Munro v. U.S., 303 U.S. 36, 82 L. ed. 633; Swiss Nat. Ins. Co. v. Miller, 289 Fed. 571, affirmed 267 U.S. 42 69 L. ed. 504; U.S. v. Michel, 282 U.S. 656, 75 L. ed. 598.

[129] Sec. 9(a), 33. Trading with the Enemy Act.

[130] Ibid.

[131] Fischer v. Palmer (1919) 259 Fed. 355.

[132] Sec. 12.

"That is to make the right to sue run not to 'any person not an enemy or ally of an enemy' as Section 9(a) in terms provides but to "any person not an enemy or ally of enemy or national of any foreign country." That would wipe out all suits to reclaim property brought by any foreign interest, no matter how friendly * * *." [133]

The sole relief and remedy of any person having any claim to vested property or property transferred to the Custodian under the Act shall be that provided for by the terms of the Act, and in the event of sale or other disposition of such property by the Custodian, shall be limited to and enforced against the net proceeds received therefrom.[134] The remedy provided for in the Act referred to is suit for return of property under Section 9(a).[135]

By the express terms of Section 7(c), the right to recovery by claimant is restricted to property seized or the proceeds derived from the sale of such property. This measures the jurisdiction of the Court.[136] As the Court said in Kahn vs. Garvan,[137] "as between the Custodian and citizens, Section 9 is enough, for the reasons I have given; so far as they may suffer injury, which that section does not meet, it is a loss that can not be cured without undue impediment to the National Power." [138]

In Von Bruning vs. Sutherland, 29 F. 2d 631, it was held that an action for reasonable rentals value of a vested property during the period of time it was in the possession of the Custodian constituted an essentially different cause of action to that provided for in Section 9(a) and was not authorized by the Act. Such a suit was in effect a suit against the United States and could not be sustained without permission first given by the United States.

However, if the vested property is earning income, in case of judgment for return of the property to its former owner, all such earnings must be turned over to him.[139] No cost could be adjudged against the Alien Property Custodian or the Administrator since no consent to pay such cost has been conferred by the United States.

No action for return of property may be instituted after April 30, 1949 or after the expiration of two years from the date of the seizure or vesting of the property, whichever date is later. But in computing such two years, there shall be excluded any period during

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[133] Supra, at p. 151.

[134] Section 7(c).

[135] Central Trust Co. vs. Garvan, 254 U.S. 554, 569.

[136] Sturcler v. Sutherland, 19 F. 2d 999.

[137] 263 Fed. 909, 916.

[138] See also 51 A.L.R. 233, Annotation: Extent of Liability in Respect to Property Seized by Alien Property Custodian under the Trading with the Enemy Act; Kohler v. Clark, 170 F. 2d 779; Josephberg v. Markham, 152 F. 2d 644, 649; Cummings v. Hardee, 102 F. 2d 622, 627, cert. denied 83 L. ed. 1518; Fischer v. Palmer, 259 Fed. 355; Clark v. Uebersee Finanz Korp, 332 U.S. 480, 487; Sigg-Fehr v. White, 285 Fed. 949, 953-955; Von Bruning v. Sutherland, 29 F. 2d 631.

[139] Sec. 23.

which there was pending a suit or claim for return pursuant to Section 9 or 32(a).[140]

No return of property may be made pursuant to Section 9 or 32 unless notice of claim has been filed: (a) in case of any property or interest acquired by the United States prior to December 18, 1941, by August 9, 1948; or (b) in the case of property or interest acquired on or after December 18, 1941, by Apri l30, 1949, or two years from the date of vesting, whichever is later.[141]

VIII. TITLE CLAIMS

In addition to the remedy afforded by Section 9(a), the President of the United States or his designee is authorized under Section 32 of the Trading with the Enemy Act to make voluntary returns of vested properties to certain qualified claimants. This section was enacted by Congress [142] to clarify the authority of the President of the United States to return vested properties to their former owners. An express grant of such authority was deemed necessary in view of the fact that after the property is vested, title to the same passes to the United States. The President, therefore, could not make any disposition of said properties unless given express congressional authorization.[143]

It should be underscored here that returns under Section 32 are discretionary. For this reason, there is no appeal from the decision of the President or his designee. The refusal of the Custodian to return property claimed under Section 32 is not subject to judicial review under the Administrative Procedure Act, 5 USCA Sec. 1009A.[144] The remedy of judicial suit under Section 9(a) of the Act and the remedy afforded by Section 32(a), namely, an administrative claim for the return of property are independent and exclusive of each other.[145] Section 32(a) was precisely enacted "to serve the limited purpose of affording speedy administrative relief (when found by the Executive in the interest of the United States) to certain classes technically barred under Section 9(a), such as nationals of countries overrun by the enemy who remained loyal to the Allied cause. Although with certain exceptions, citizenship and presence within the territory of an enemy barred relief under the discretionary authority granted by Section 32(a), they, of themselves, do not bar recovery under Section 9(a)." [146]

The claimants qualified for administrative return of vested properties are the owners of vested properties immediately prior to its vesting or their successors in interest by inheritance, bequest, or

[140] Sec. 33.

[141] Ibid.

[142] Public Law 322, 79th Congress, approved March 8, 1946.

[143] See the Hearings before the Subcommittee No. 1, Committee on the Judiciary, H.R. 79th Congress, Sept. 12, 1945, pp. 3-4.

[144] McGrath vs. Sanders, 177 F. 2d 649.

[145] Ibid.

[146] Ibid, at p. 652.

operation of law. Such claimants, however, must show that they are not

"(A) the Government of Germany, Japan, Bulgaria, Hungary, or Rumania; or

(B) a corporation or association organized under the laws of such nation: *Provided,* That any property or interest or proceeds which, but for the provisions of this subdivision (B), might be returned under this section to any such corporation or association, may be returned to the owner or owners of all the stock of such corporation or of all the proprietary and beneficial interest in such association, if their ownership of such stock or proprietary and beneficial interest existed immediately prior to vesting in or transfer to the Alien Property Custodian and continuously thereafter to the date of such return (without regard to purported divestments or limitations of such ownership by any government referrel to in subdivision (A) hereof) and if such ownership was by one or more citizens of the United States or by one or more corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia: Provided further, That such owner or owners shall succeed to those obligations limited in aggregate amount to the value of such property or interest or proceeds, which are lawfully assertible against the corporation or association by person not ineligible to receive a return under this section; or

(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States, or a diplomatic or consular officer of Italy or of any nation with which the United States has not at any time since December 7, 1941, been at war: Provided, That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree, or regulation of such nation discriminating against political, racial, or religious groups, shall not be deemed to have voluntarily resided in such territory; or

(D) an individual who was at any time after December 7, 1941, a citizen or subject of Germany, Japan, Bulgaria, Hungary, or Rumania, and who on or after December 7 ,1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: Provided, That notwithstanding the provisions of this subdivision (D) return may be made to an individual who, as a consequence of any law, decree, or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups, has at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation; And provided further, That, notwithstand-

ing the provisions of subdivision (C) hereof and of this subdivision (D), return may be made to an individual who at all times since December 7, 1941, was a citizen of the United States, or to an individual who, having lost United States citizenship solely by reason of marriage to a citizen or subject of a foreign country, reacquired such citizenship prior to the date of enactment of this proviso if such individual would have been a citizen of the United States at all times since December 7, 1941, but for such marriage: And provided further, That the aggregate value of returns made pursuant to the foregoing proviso shall not exceed $5,000,000; and in making returns under such proviso the Alien Property Custodian shall to the extent practicable make such returns in the order in which notices of claims therefor were received and may return any property or interest if the value thereof, taken together with the aggregate value of property and interests already returned pursuant to such proviso, does not exceed $5,000,000; or

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof; Provided, That notwithstanding the provisions of this subdivision (E), return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was occupied by the military or naval forces of any nation with which the United States has at any time since December 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section." [147]

The property or interest claimed or the net proceeds of which are claimed must be shown to be, at any time after September 1, 1939, not held or used by or with the consent of the person who is the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States or any person ineligible to an administrative return of the property.[148] Return can only be made if the Alien Property Custodian has no actual or potential liability under the Renegotiation Act or the Act of October 31, 1942 in respect of the property or interest or proceeds to be returned and that the claimant and his predecessors in interest, if any, had no actual or potential liability of any kind under the Renogotiation Act or the Act of October 31, 1942, or in the alternative, that the claimant has provided security or undertakings adequate to assure satisfaction of all such liabilities or that property or interest or proceeds to be retained by the Alien Property Custodian are adequate

[147] Sec. 32(a).
[148] Sec. 32(a) (3).

therefor.[149] In no event will a return be made if it is not in the interest of the United States.[150]

Any qualified claimant must file in the Philippines with the Philippine Alien Property Administrator, or in the United States with the Office of Alien Property, the successor in office of the Alien Property Custodian, by April 30, 1949, or within two years from the date the property claimed was vested, whichever is later.[151] If the property claimed was, however, vested prior to December 18, 1941, the claim must have been filed not later than August 9, 1948. Claims filed with the Philippine Alien Property Administration are accomplished on PAPA Form No. 1. Unless waived by the Administrator, only claims filed on the prescribed form shall be considered as claims or notices of claims filed with the Administration.[152]

Any person to whom a return is made shall have all the rights, privileges and obligations in respect to the properties or interest returned or the proceeds of which are returned which would have existed if the property or interest had not been vested. No cause of action shall, however, accrue to such person in respect to any deduction or retention of any part of the property or interest or proceeds of the Alien Property Custodian for the purpose of paying taxes, costs or expenses in connection with the subject property or the proceeds. Provided, that except as provided in subsections (b) and (c) of Section 32, no person to whom a return is made pursuant to said section, shall acquire or have any claim or right of action against the United States or any department established or agency thereof, or corporation owned thereby, or against any person authorized or licensed by the United States, founded upon the retention, sale, or other disposition, or use, during the period it was vested, of the returned property, interest, or proceeds. The Administrator is authorized further to retain or recover from such property to be returned an amount not exceeding that expended or incurred by him for the conservation, preservation or maintenance of said property.[153]

At least thirty days before making the return to any person other than a resident of the United States or a corporation organized under the laws of the United States or any state, territory, or possession thereof, or the District of Columbia, the President or his designee shall publish in the Federal Register a notice of intention to make such return, specifying therein the person to whom the return is to be made and the place where the property or proceeds to be returned are located. Publication of a notice of intention to return shall confer no right of action upon any person to compel the return of any such property or interest or proceeds and such notice

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[149] Sec. 32(a) (4).

[150] Sec. 32(a) (5).

[151] Sec. 33.

[152] Sec. 602.5, Rules of Procedure for Claims, Philippine Alien Property Administration.

[153] Sec. 32(d).

of intention to return may be revoked by appropriate notice in the Federal Register.[154]

No return shall bar the prosecution of any suit at law or in equity against a person to whom return has been made, to establish any right, title, or interest, which may exist or which may have existed at the time of vesting, in or to the property or interest returned, but no such suit may be prosecuted by any person ineligible to receive a return under subsection (a) (2) of Section 32. With respect to any such suit, the period during which the property or interest or proceeds returned were vested in the Alien Property Custodian shall not be included for the purpose of determining the application of any statute of limitations.[155]

IX. DEBT CLAIMS

Since by being vested or seized enemy properties would become properties of the United States, every vestige of the interest of the former owner completely disappearing, the unsecured creditors of said owners would lose all recourse against said properties in case of default in payment. These unsecured creditors would be greatly prejudiced by such vesting unless their equities were to be properly recognized. It was quite apparent that to cut off completely their right to have said properties attached in payment of the just debts of the former owners incurred before the outbreak of the war in normal course of business, would be to prejudice them beyond measure. True, indeed, that these unsecured creditors have no liens or property interest in the properties of their debtors, unlike the secured creditors, and for this reason they could not claim protection of the due process clause. Congress was not, therefore, bound to provide in their favor recourse against the properties of their debtors to obtain payment of the latter's debts. Nevertheless, Congress fully realized that great injustice would be caused to American creditors who had extended credit on the expectation of being able to enforce payment by attaching properties of their debtors. In authorizing therefore the seizure of enemy properties, Congress sought also to protect the rights of American creditors.[156]

So, even under the original provisions of the Trading with the Enemy Act, the rights of certain creditors of former owners of vested properties were amply protected. Section 9 of the original Act provided:

> "That any person, not an enemy, or ally of enemy . . . to whom any debt may be owing from an enemy or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, ansigned, delivered or paid to the Alien Property Custodian hereunder . . . may file with the said Custodian a notice of his claim under oath and in such form and containing such particular as the said Costodian shall require . . ."

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[154] Sec. 32(f).

[155] Sec. 32(e).

[156] Miller v. Robertson, 266 U.S. 243, 69 L. ed. 265.

If the claim is not paid, the claimant may at any time before the expiration of six months after the end of the war, institute a suit in equity in the district court of the United States for the district in which the claimant resides to establish the debt so claimed.

On June 5, 1920, Section 9 was amended to limit the classes of debts and claimants to be paid. The amendment provided that no debt shall be allowed "to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section [157] unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or the Treasurer of the United States hereunder." [158] By an amendment approved August 24, 1937, it was provided that "any arrangement made by a foreign nation for the release of money or other property of American citizens and certified by the Secretary of State to the Attorney General shall be regarded as meeting "the requirements of reciprocity provided for by the June 5, 1920 amendment."

The debt claim procedure under Section 9 had one important shortcoming. It did not provide for the marshalling of claims against the former properties of a particular debtor. In case of the insufficiency of such properties to pay all outstanding claims, the creditor who obtained a judgment first got paid first. Though the funds held by the Alien Property Custodian might be insufficient to meet the outstanding claims against it, a suit by creditors of the former owners did not call for a marshalling of claims or a prorating of such funds among creditors and the existence of other claims was immaterial.[159] Such a "first come first serve" "scramble for position" procedure made the debt claim settlement a "race of diligence."

This procedure was very unsatisfactory. So that after the outbreak of the second World War, the Alien Property Custodian recommended the enactment of an amendment setting up a different procedure for the settlement of debt claims patterned after the Bankruptcy Law. Such a procedure would call for the marshalling of claims to determine whether the properties would be sufficient to pay all claims. In case of the insufficiency of said properties, then an equitable distribution of the proceeds of the properties among all allowed claims would have to be made according to a schedule of payment based on an established order of priority.

The enactment of a new debt claim procedure was further urged in view of the fact that some doubts had been expressed as to whether or not a creditor of the former owner of property vested dur-

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[157] Sec. 9.

[158] Public Law No. 252, 66th Congress, 41 Stat. L. 977.

[159] U.S. v. Securities General (1925) 4 F. 2d 619, affirmed (1925) 269 U.S. 283, 70 L. ed. 275.

ing the second World War might file a suit under Section 9(a) of the Trading with the Enemy Act for the satisfaction of his claim. It had been contended on behalf of the Government in Markham vs. Cabell that only claims for debts owing to and owned by the claimant, prior to October 6, 1917, as provided for in Section 9(e) might be sued for and consequently Section 9(a) did not apply to debt claims arising from the second World War. The Supreme Court overruled this contention and held that the debt claim provision of Section 9(a) remained in force during World War II. Subsection (e) of Section 9 was limited to seizures made during World War I and does not apply to seizures made in World War II. The Court, however, left undecided the question of whether any judgment secured by a creditor for the payment of a debt due and owing him from the former owner of vested property may be satisfied by payment out of the vested properties, considering the broad grant of powers given the Executive by Section 5(b) of the Trading with the Enemy Act, as amended, to make affirmative use of the property that the national interest in time of war might require. This and similar problems raised questions of policy for Congress to decide.

The necessity for clarification of the debt claim procedure by congressional legislation was suggested by the Cabell vs. Markham case.[160] The Custodian opined that in the absence of legislation clarifying his authority to set up a system of equitable distribution, with appropriate bar dates for the filing of all debt claims, he may be compelled as a result of the Supreme Court's decision to undertake the payment of debt claims on a "first come first served" basis. This would mean a scramble for position by creditors and many accounts might be exhausted to the total exclusion of late comers who may nevertheless have meritorious claims. The Custodian believed that the provisions of Bill No. H.R. 5089[161] were needed to prevent a condition of anarchy in this field and that Congressional action was the only expeditious means of resolving the debt-claim problem with justice to the claimants and the United States.[162]

Accordingly, after much deliberation and study, Congress enacted Public Law 671,[163] setting up a comprehensive procedure for the settlement of debt claims arising from World War II. By this law Sections 33 to 38 were added to the Trading with the Enemy Act.

Section 34 sets up a new procedure for the settlement of debts owed by the former enemy owners of the property vested due and owing at the time of such vesting. Any claim for the payment of the debts owed by the former owner of a vested property due and owing at the time of vesting must be filed before the expiration of the date fixed by the Alien Property Custodian (in the Philippines, the Philippine Alien Property Administrator) after which the claim

[160] 326 U.S. 404.

[161] This Bill with few amendments later became Public Law 671.

[162] Hearings before Sub-Committee No. I of the Committee on the Judiciary, House of Representatives, 79th Congress, 2nd Session, H.R. 5089, Feb. 7, 1946, pp. 11-12.

[163] August 8, 1946, 60 Stat. 925.

in respect of the enemy debtor shall be barred. The Custodian shall then examine the claim, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination allowing or disallowing the claim, in whole or in part. If the claim is disallowed, the claimant may file a complaint for review of the disallowance before the District Court of the United States for the District of Columbia. In providing for a judicial review of the determination of the Alien Property Custodian, Congress limited the forum for review to the District Court of the United States for the District of Columbia. The Committee Reports on Public Law 671 clearly indicate this intention. In these reports, both committees noted that

> "[Subsections 34(e) and (f)] provide that the United States District Court for the District of Columbia shall be the forum for review. Since the procedure calls for a marshalling of claims and since, on review, the court may have to give considerations to the entire account, it would cause a serious breakdown in a administrative and judicial procedure if debt claims determinations were reviewed by the several district courts throughout the country. It is believed that the matter must be centralized and no injustice shall result." [164]

The administrative determination by the Alien Property Custodian (in the Philippines by the Philippine Alien Property Administrator) of the allowance or disallowance of a debt claim, subject to a judicial review by the District Court of the United States for the District of Columbia, is the sole and exclusive remedy available to any person seeking the satisfaction of a debt claim.

Section 34(i) clearly repeals the provision of Section 9(a) relating to suits for the enforcement of debt claims. All debt claims are now, therefore, governed by Section 34 of the Trading with the Enemy Act and no suit can be prosecuted for the enforcement of debt claims, except in the manner provided by Section 34 of the Trading with the Enemy Act, as amended.[165]

In the United States then, it is already well-settled that since the enactment of Public Law 671, no suits for the payment of debt claims can be prosecuted under Section 9(a) of the Trading with the Enemy Act, and that the only remedy available to a debt claimant is an application for an administrative allowance of his claim by the Alien Property Custodian, subject in cases of disallowance to a judicial review by the District Court of the United States for the District of Columbia. The District Courts of the United States have consistently refused to encroach upon the exclusive jurisdiction of the District Court for the District of Columbia to review determinations of the Alien Property Custodian.

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[164] Senate Report No. 1839, 79th Congress, 2nd Session p. 7; House Report No. 2398, 79th Congress, 2nd Session, p. 13.

[165] Cabell v. Clark, 162 F. 2d 153; Alley v. Clark, 71 F. Supp. 521; Blank v. Clark, (1948) 79 F. Supp. 373; Cabell v. Markham, 69 F. Supp. 640; Fausten v. Clark, 86 F. Supp. 238.

It could be inferred from the provisions of Section 34(a) to the effect that vested properties or the net proceeds thereof shall be equitably applied to the payment of debts owed by the person who owned such properties immediately prior to vesting, that it is not intended to apply the entire mass of vested properties generally to the payment of claims of creditors of all enemy owners. The assets against which claims may be filed are those owned before vesting by the particular debtor of the claimant.

It is also clear from the same provision that all qualified creditors of a particular debtor may file a claim against his vested properties without limitation as to the location of said properties. This means that all the properties of the former enemy owner located in the Philippines and in the United States and held separately by the Philippine Alien Property Administrator and the Attorney General, as successor of the Alien Property Custodian, will be pooled and the same will be equitably applied to the payment of all creditors based on a system of priorities provided for in Section 34. It is obvious that the equitable application required by Section 34(a) demands close coordination and joint action between the Philippine Alien Property Administration and the Office of Alien Property in order to promote administrative efficiency in the processing of claims and to prevent double payment of claims and inequitable application of vested property to the payment of claims. So, in order to facilitate the solution of intercustodial problems arising from the assertion of claims under section 34, in respect of debtors whose property has been vested in or transferred to the Office of Alien Property and the Philippine Alien Property Administration, the Attorney General of the United States and the Philippine Alien Property Administrator on July 28, 1950 agreed to established a joint debt claim procedure.

Claims allowable include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, of the District of Columbia or the Philippine Islands; those of natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act (50 U.S.C. 21); and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.[166]

No debt shall be allowed if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this Act and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who has since the be-

[166] Sec. 34(a), Trading with the Enemy Act, as amended.

ginning of the war been convicted of violation of the Act, as amended, sections 1-6 of the Criminal Code (18 U.S.C. 1-6), title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose of determining the application of any statute of limitations.[167]

Debt claims shall be filed with the Office of Alien Property,[168] or in the Philippines, with the Philippine Alien Property Administration within the date fixed by the Philippine Alien Property Administrator, after which the filing of debt claims in respect of a particular debtor shall be barred. The date thus fixed may be extended upon sixty days' notice by publication in the Federal Register. But in no event shall the time extend beyond the expiration from the date of the last vesting of any property or interest of a debtor in respect of whose debts the date is fixed or beyond August 8, 1948, whichever is later. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or interest or proceeds in respect of which a suit or proceeding pursuant to this Act for return is pending and was instituted prior to the expiration of such one hundred and twenty days.[169]

Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian, including both expenses in connection with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes as defined in Section 36 of the Trading with the Enemy Act, paid by the Custodian in respect of such property or interest of proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the Custodian, ratable payments shall be made in accordance with subsection (g) to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through

[167] Ibid.

[168] Successor in office of the Alien Property Custodian.

[169] Sec. 34(b).

liquidation of any such property or interest or otherwise. The Custodian shall not be required, through any judgment of any court, levy of execution, or otherwise, to sell or liquidate any property or interest vested in or transferred to him, for the purpose of paying or satisfying any debt claim.[170]

If there are sufficient net assets to pay all claims, the procedure for payment provided for in subsection (e), Section 34, will be applied. Otherwise, subsections (f) and (g) will govern.

X. MEANING OF "DEBT" UNDER SECTIONS 9 (a) AND 34

It is to be observed that although Section 2 of the Trading with the Enemy Act contains a definition of terms, it does not define what it meant by "debt" as used in the law. From this, we infer that the Trading with the Enemy Act did not intend to give a special meaning to the word "debt." In one case, it was held that it was intended to give it its usual and definite legal meaning.[171] In another case, it was held that it was used in the sense in which the legislature knows it will be understood by the common people.[172] In still another another case, it was said that Congress intended to use it in the popular sense—a sense in which it is understood by the average person and not that restricted, technical, common-law sense in which it is often used.[173] It would seem then that our problem is one of semantics.

Even if the term "debt" is to be construed liberally [174] and is not confined to causes for which common law actions of debt may be maintained,[175] its meaning should not be enlarged to include a claim for damages for personal injuries arising out of a tort.[176] As one federal court has observed:

> "It is easy to understand why Congress was moved not to include innocent creditors in the pains and penalties imposed by this act. It is impossible to understand why Congress should make a difference between the two classes of creditors we have indicated in the suppositious cases presented. It is clear Congress was not moved, and we can understand why it was not moved to show a like indulgence to those having claims for damages arising out of torts." [177]

In Tyler Co. vs. Deutsche D. G. Hansa,[178] it was assumed without question that the word "debt" did not include liabilities for pure tort

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[170] Sec. 34(c).

[171] Tyler Co. v. Deutsche D.G. Hansa, 276 Fed. 134.

[172] Norris v. Bergdoll, 283 Fed. 981.

[173] Sutherland v. Kanawha Valey Bank, 48 F. 2d 1027.

[174] Synthetic Patents Co. v. Sutherland, 22 F. 2d 491, cert. denied 48 S. Ct. 324, 276 U.S. 630, 72 L. ed. 741.

[175] Norris v. Bergdoll, 283 Fed. 981.

[176] Stassi v. Markham, 69 F. Supp. 163.

[177] Norris v. Bergdoll, supra, at 984.

[178] 276 Fed. 134.

damages. Even counsel for the plaintiff conceded this. As far as can be ascertained from the cases brought under Section 9(a) for the payment of debts owned by enemy nationals whose properties were acquired by the Alien Property Custodian, there has been no claim allowed arising from an obligation not created by contract, express or implied.

The few cases decided since the enactment of Public Law 671 refer more to the distinctions between debt claims and right, title and interest claims, rather than what are debt claims and what are not debts. When Congress enacted Public Law 671 without defining what is understood by the term "debt" it is to be assumed that it intended to give it the same meaning given by the courts as used in Section 9(a). The following are among the most important cases decided under the provisions of Section 9(a).

The following have been held to be "debts within the meaning of Section 9(a):

1. Attorney's fees.[179]

2. Monthly salaries for services rendered to alien enemy from 1914 to June 30, 1918.[180]

3. Reimbursement of expenses advanced to children of enemy nationals under a contract entered before the war to reimburse whatever sums may be so advanced.[181]

4. Notes issued by the German Imperial Government before the war.[182]

5. Obligations of German corporation to guarantee payment of principal and interest on certain mortgage indebtedness.[183]

6. Bank deposits.[184]

7. Damages for breach of contract to purchase ore.[185]

8. Claims of insurance policy holders against insurance policies issued by German insurance company.[186]

The following have not been considered as debts:

1. Claim of owner against German carrier for value of goods sold by carrier for maintenance of ship and crew while in neutral port.[187]

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[179] Wilson v. Miller, 274 Fed. 808; Norris v. Bergdoll, 283 Fed. 981; Koscinski v. White, 286 Fed. 211; Rockwood v. Miller, 290 Fed. 341; Cabell v. Clark, 162 F. 2d 153; Blank v. Clark, 79 F. Supp. 373.

[180] Garvin v. Kogler, 272 Fed. 442.

[181] Springer v. Garvan, 276 Fed. 593.

[182] U.S. v. Securities Corporation General, 4 F. 2d 619; White v. Mechanics' Securities Corp., 46 S. Ct. 116, 269 U.S. 283, 70 L. ed. 275.

[183] Sutherlands v. Kanawha Valley Bank, 48 F. 2d 1027.

[184] Zimmerman v. Hicks, 7 F. 2d 443, affirmed 274 U.S. 253, 71 L. ed. 1034; City National Bank of Selma v. Dresdner Bank of Bremen, 255 Fed. 225.

[185] Miller v. Robertson, 266 U.S. 243, 69 L. ed. 243, affirming 286 Fed. 503.

[186] Farmer Loan and Trust Co. of U.S. v. Miller, 9 F. 2d 848, cert. denied 269 U.S. 583, 70 L. ed. 425.

[187] Tyler Co. v. Deutsche D.G. Hansa, 276 Fed. 134.

2. Income tax on remittances to nonresident aliens which American corporation was compelled to pay to Government, because it failed to withhold the same, is not recoverable as "debt owing or owed within the meaning of Section 9(a).[188]

3. Claims for damages arising from personal injuries before the same has been reduced to judgment.[189]

XI. JURISDICTION OF PHILIPPINE COURTS

Prior to the enactment of the Philippine Property Act of 1946, the Courts of First Instance of the Philippines did not have any jurisdiction over civil suits against the Alien Property Custodian involving properties located in the Philippnes formerly owned by enemy nationals and vested in the President of the United States or the Alien Property Custodian in accordance with the provisions of the Trading with the Enemy Act, as amended. The only jurisdiction given to the Courts of First Instance of the Philippines by the Trading with the Enemy Act, as amended, was in regard to criminal offenses under said law committed within their respective jurisdictions.[190] Thus in defining the jurisdiction of the Courts of First Instance of the Philippines under the Trading with the Enemy Act, the Supreme Court of the Philippines in Behn, Meyer & Co. vs. Stanley,[191] said:

> "The only jurisdiction given to the Courts of First Instance of the Philippine Islands is in regard to criminal offenses under said Act as shown by Section 18 thereof. Had it been shown by the intention of Congress to give the Philippine courts jurisdiction over civil litigations in regard to property under the control of the Alien Property Custodian, the Act would of course have so stated."

This pronouncement of our Supreme Court is but an application of the well-settled principle of law that the United States cannot be sued without its consent expressed in an Act of Congress.

Inasmuch, therefore, as the United States in Section 9(a) of the Trading with the Enemy Act had merely consented to be sued in regard to vested property in the District Court of the United States for the District of Columbia or in the District Court of the United States for the district in which the claimant resides, the Supreme Court of the Philippines in the case of Behn, Meyer & Co. vs. Stanley, supra., correctly held that jurisdiction over civil suits relating to vested properties located in the Philippines has never been conferred by the Congress of the United States upon the Courts of First

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[188] Synthetic Patents Co. v. Sutherland, 22 F. 2d 494, cert. denied 72 L. ed. 741.

[189] Stassi v. Markham, 69 F. Supp. 163.

[190] Vide Sec. 18, Trading with the Enemy Act, as amended, 40 stat. 459, 50 USCA App. 18.

[191] 47 Phil. 998, 1006.

Instance of the Philippines. Section 9(a), being a waiver by the United States of its immunity from suits, must be strictly construed.[192] For this reason, the provision authorizing a claimant to file a suit in the District Court of the United States for the district in which he resides cannot be interpreted to mean the Courts of First Instance of the Philippines in those cases where the claimant is a resident of the Philippines. In such cases, suit must be filed with the District Court of the United States for the District of Columbia.

By the enactment, however, of the Philippine Property Act of 1946, the Courts of First Instance of the Republic of the Philippines were given similar jurisdiction over enemy properties located in the Philippines, as the District Courts of the United States, over properties located in the United States.[193]

Suits authorized under the Trading with the Enemy Act with respect to vested properties are those provided for in Section 9(a), to wit: (1) Suits filed by any person not an enemy or ally of an enemy claiming any interest, right or title in any vested property for the return of property, and (2) suits filed by any person not an enemy or ally of enemy to whom any debt may be owing from an enemy whose property has been vested for the payment of said debt.

We have seen that Public Law 671 repealed the debt provisions of Section 9(a). By virtue of said law, no judicial action can be maintained to obtain payment of a debt claim except by way of judicial review of an administrative disallowance of the claim in the District Court of the United States for the District of Columbia. United States' consent to be sued in other courts had been withdrawn. The question then is: does such withdrawal of consent include suits for payment of debt before the courts of the Philippines?

It may be contended that by virtue of Section 3 of the Philippine Property Act of 1946, appeals from the determinations of the Philippines Alien Property Administrator disallowing a debt claim may be made to the Courts of First Instance of the Philippines instead of the District Court of the United States for the District of Columbia. This view, however, ignores the demonstrated intent of Congress to provide for a centralized procedure for the settlement of debt claims and to limit the forum for review to a single court, the District Court of the United States for the District of Columbia.

It must be noted that Public Law 671, though practically contemporaneous with the Philippine Property Act of 1946, was actually passed a month later and was enacted after proper consideration of the earlier provisions for Philippine Independence, including the Philippine Property Act of 1946.[194] In providing that suits for the satisfaction of debt claims shall not be instituted, prosecuted or further maintained except in conformity with Section 34, Congress in effect repealed the authority granted to the District Courts of the United States, except the District Court of Columbia, and the Courts of First Instance of the Philippines, to entertain debt claim suits

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[192] 142 F. 2d 240.

[193] Sec. 3, 60 Stat. 418, 22 U.S.C.A. 1381.

[194] See House Report No. 2398, 79th Congress, 2nd Session, p. 5.

under Section 9(a). There can be no question that Congress of the United States may properly do this. Since consent to sue the United States is not a vested right protected by the Constitution but merely a privilege accorded on such terms and conditions as Congress may prescribe, the privilege may be withdrawn and the terms and conditions upon which it may be exercised, modified whenever and to whatever extent Congress in its discretion may determine.[195] "The United States through Congress may decide how, when, and where it wishes to be sued, and may open or close its judicial tribunals to claims against it as and when Congress elects." [196] The consent of the United States to be sued with respect to claims to properties seized by the Alien Property Custodian could be withdrawn at any time.[197]

As Public Law 671, adding Section 34 of the Trading with the Enemy Act, does not authorize suits for the payment of debts of enemy nationals formerly owning vested properties, limiting the remedies of their creditors to an administrative determination of their claims, subject only in cases of disallowance to a judicial review by the District Court of the United States for the District of Columbia, Section 3 of the Philippine Property Act of 1946, conferring jurisdiction to the Courts of First Instance of the Philippines, refers only to title suits or suits for the return of vested properties or interest therein. Said sections does not authorize the filing of suits for the payment of debts of the former owner of vested properties in the Courts of First Instance of the Philippines inasmuch as such kind of suits is not authorized under the Trading with the Enemy Act, as amended.[198]

On December 21, 1950, Congress of United States passed an amendment to Section 3 of the Philippine Property Act of 1946.[199] This amendment provided that after ninety days from the enactment of the amendment all suits against the officer or agency designated by the President under the Philippine Property Act of 1946 with respect to vested properties, shall be brought only in the courts of the United States. This is a virtual withdrawal of the consent of the United States to be sued in the courts of the Philippines after ninety days from December 21, 1950.

In discussing the jurisdiction of the Philippine courts over suits against the Philippine Alien Property Administrator involving vested properties, it is necessary to bear in mind that such suits are actually suits against the United States. This is but a logical application of the doctrine already well-established in the United States that suits against the Alien Property Custodian or the Attorney General with respect to vested properties are in substance suits

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[195] Huff v. U.S., 22 F. Supp. 309; Lynch v. U.S., 54 S. Ct. 840, 292 U.S. 571, 78 L. ed. 1434; De Groot v. U.S., 5 Wall. 419, 18 L. ed. 700; Wilmer v. U.S., 292 U.S. 571, 78 L. ed. 1434; Reid v. U.S., 211 U.S. 529, 538, 53 L. ed. 313; Kline v. Burke Construction Co., 260 U.S. 226, 234, 67 L. ed. 226; Tuton v. U.S., 270 U.S. 568, 576, 70 L. ed. 738.

[196] U.S. v. Alberty, 63 F. 2d 965, 966.

[197] Cummings v. Deutsche Bank, 300 U.S. 115, 81 L. ed. 545.

[198] Parreño v. Philippine Alien Property Administrator, G.R. No. L-4263.

[199] Public Law 885, 71st Congress.

against the United States. This is but a logical application of the doctrine already well-established in the United States that suits against the Alien Property Custodian or the Attorney General with respect to vested properties are in substance suits against the United States. For this reason, only such kinds of suits to which the United States has waived its immunity from suits can be maintained against the Philippine Alien Property Administrator in the Courts of the Philippines.[200]

There is this one difference, however, to be observed. Whereas the immunity of the United States from suits not consented involving vested properties in the United States rests on the principle of the nonsuability of the sovereign without its consent, in the Philippines it is based on general principles of international law exempting a foreign state from suit on grounds of comity. It is evident that the United States as a sovereign state may not be sued in the Philippines without its consent. This immunity extends to agencies and public officers of the United States where it appears that although the action is nominally against them, it is actually directed against the United States.

Since the establishment of the Republic, our Supreme Court has on at least three other occasions sustained the immunity of officers of the United States from suits where it appeared that the suits were actually against the United States.[201] Such would be a case, for instance, where the judgment against an officer of the United States is to be satisfied by disbursement of funds of the United States.

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[200] Philippine Alien Property Administrator v. Judge Castelo, G.R. No. L-3981, promulgated July 30, 1951.

[201] Syquia vs. General Moore, G.R. No. L-1648; Marvel Construction Corp. vs. War Damage Commission, G.R. No. L-1822; and Lim vs. Nelson et al, G.R. No. L-2412.