

UNITED STATES OF AMERICA ON ITS OWN BEHALF THROUGH
THE ALIEN PROPERTY CUSTODIAN *v.* GERMANY AND KALLE
& CO. AKTIENGESELLSCHAFT, IMPLEADED

(March 8, 1928, pp. 881-882.)

From the record in the above captioned case it appears that the Kalle Color and Chemical Company, Inc., a New York corporation (hereinafter designated New York corporation), during the period of American neutrality sold goods, wares, and merchandise and made advances to Kalle & Co. Aktiengesellschaft (hereinafter designated German corporation). It is alleged that as a result of these transactions the German corporation was on September 29, 1917, indebted to the New York corporation in the sum of \$182,881.63.

The Government of the United States, through its Alien Property Custodian, during the period of American belligerency lawfully seized as German-owned 1,000 shares (being two-thirds) of the capital stock of the New York corporation, and through voting these shares elected a board of directors of its selection. This board caused the New York corporation to be dissolved and liquidated in pursuance of the laws of the State of New York. In the course of such liquidation the alleged claim of indebtedness of the New York corporation against the German corporation was on February 15, 1921, proportionately assigned by the liquidating trustees to the stockholders of record of the New York corporation as their respective interests then appeared, one-third of such claim being assigned to stockholders of American nationality and the remaining two-thirds to the Alien Property Custodian as such. It is for this two-thirds — amounting to \$121,921.08 — that an award is here sought against Germany.

It will be noted that the New York corporation, which possessed American nationality, had been dissolved and liquidated prior to the coming into force of the Treaty of Berlin on November 11, 1921. In the course of such liquidation the Alien Property Custodian, through the board of directors designated by him, caused the German interest to be carved out of the claim of the New York corporation against the German corporation and, because it was German-owned, assigned to the Custodian in his official capacity.

It is apparent therefore that on the coming into force of the Treaty of Berlin no American national had any interest in the claim here asserted.

Under the Treaty of Berlin and the Agreement between the United States and Germany in pursuance of which this Commission was constituted, “ debts ” for the payment of which Germany is obligated are limited to those owing by the German Government or by German nationals to American nationals.

The Commission holds that the debt here asserted by the United States through its Alien Property Custodian as an obligation of Germany is not embraced within either the letter or the spirit of the Treaty and of the Agreement mentioned.

This view is strengthened by the Act of the Congress of the United States designated “ Settlement of War Claims Act of 1928 ”, providing among other things for the ultimate return of all property of German nationals held by the Alien Property Custodian. Considering the claim here asserted in the light of the provisions of that Act, the United States through its Alien Property Custodian is, in the last analysis, seeking an award against Germany on behalf not of American nationals but of German nationals.

Wherefore the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay to the Government of the United States any amount on account of the claim asserted herein.

Done at Washington March 8, 1928.

Edwin P. PARKER
Umpire

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner
