1938
May 9.
1939
Feb. 20.

BETWEEN:

ARPAD SPITZ ..... CLAIMANT;

AND

THE SECRETARY OF STATE OF CANADA, as Custodian of Alien Enemy Property ..... } RESPONDENT.

Crown—Consolidated Orders respecting trading with the Enemy, P.C. 1023, 1916—Treaty of Peace—Treaty of Peace (Germany) Order, 1920—Interpretation of War Measures—Purchaser of shares from an enemy national before termination of Great War is not entitled to registration of same—Registered enemy shareholder not entitled to notice of application for order vesting such shares owned by him in Custodian of Alien Enemy Property—Nationality of transferee immaterial.

P.C. 1023, dated May 2, 1916, and entitled "Consolidated Orders Respecting Trading with the Enemy" provided *inter alia:*

> 6. (1) No transfer made after the publication of these orders and regulations in the *Canada Gazette* (unless upon licence duly granted exempting the particular transaction from the provisions of this subsection) by or on behalf of an enemy of any securities shall confer on the transferred any rights or remedies in respect thereof and no company or municipal authority or other body by whom the securities were issued or are managed shall, except as hereinafter appears, take any cognizance of or otherwise act upon any notice of such transfer.
>
> (2) No entry shall hereafter, during the continuance of the present war, be made in any register or branch register or other book kept within Canada of any transfer or any securities therein registered, inscribed or standing in the name of an enemy, except by leave of a court of competent jurisdiction or of the Secretary of State.

By leave of the Court and by consent of the parties to this proceeding five questions were set down for hearing. The issues involved in these questions are, whether or not the claimant, who acquired for a consideration from a German national, before the termination of the Great War, certain shares of the common stock of the Canadian Pacific Railway Company, and the certificates representing such shares, can now claim ownership of such shares, and require registration of the certificate of such shares in his own name, in the share register of the Canadian Pacific Railway Company.

In April, 1919, on application of the Custodian, of which the Canadian Pacific Railway Company had notice, an order was made by a Judge of the Superior Court of the Province of Quebec under Order 28 of the Consolidated Orders, vesting in the Custodian a considerable number of C.P.R. Company shares, including those here in question, which were registered on the New York register of the C.P.R. Company. The C.P.R. Company acted upon the vesting order and has refused to act upon any transfer, made by an enemy national, of the shares in question.

Held: That in interpreting war measures such as the Consolidated Orders above referred to, the objects of the same must be held strictly in mind, and such measures must be given that construction which will best secure the end their authors had in mind.

2. That Order 6 (1) effectively prevented the claimant from acquiring a legal or equitable title, or any rights or remedies, to or in the shares under the transfer to him by the German national.

3. That Order 6 (1) does not require that the transferee must be a Canadian, or that the transfer must be made in Canada, or that the registration of the securities must be in Canada, or that the locus of the certificates must be in Canada.

4. That the registered enemy owner of the shares in question was not entitled to notice of the Custodian's application for an order vesting ownership of the shares in the Custodian.

5. That the sole right or claim of an enemy national, whose property has been retained and liquidated by Canada, is one for compensation against his own State.

6. That the Treaty of Peace and The Treaty of Peace (Germany) Order, 1920, effectually validated and confirmed the vesting order, and also operated as a vesting order to vest in the Custodian the legal and equitable title to the shares in question.

7. That the nationality of the transferee, under any Treaty, is immaterial.

ARGUMENT on questions submitted to the Court by leave of the Court and the consent of the parties concerning the right of the claimant to registration in his name of certain shares of stock purchased by him from a German national before the termination of the Great War.

The argument was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

R. V. Sinclair, K.C. for the claimant.

Aimé Geoffrion, K.C. and *H. A. Aylen, K.C.* for the respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, now (February 20, 1939) delivered the following judgment:

The claimant appears presently to be a banker carrying on business in the City of Zurich, Switzerland. He was born in the district of Slovakia, Hungary, and was therefore by birth an Austro-Hungarian national. When this proceeding was instituted, and when the claimant acquired from a German national certain certificates of shares of stock of the Canadian Pacific Railway Company which are in question here, Slovakia comprised a portion of the

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Republic of Czechoslovakia which was carved out of Hungary, and the claimant was, I understand, a subject of Czechoslovakia. Czechoslovakia, it seems, was recognized as an independent republic in October, 1918, by the Allied Powers. The Custodian disclaims any interest in the nationality of the claimant in so far as this case is concerned.

In February, 1919, the claimant purchased in the City of Amsterdam, through the Hollandache Trust Company, a company owned and controlled by the claimant, from a Berlin bank, 400 shares of the common stock of the Canadian Pacific Railway Company (hereafter to be referred to as "Canadian Pacific"), 110 shares of which he sold to Continental brokers, and as to the balance, 290 shares, the claimant here claims, *inter alia*, a declaration of the Court that the Secretary of State of Canada, as Custodian of Alien Enemy Property (hereafter to be referred to as "the Custodian"), who claims possession or title to the said shares by reason of various war measures, has no interest or right therein, and that the claimant is the owner of such shares; and the claimant seeks an order inhibiting the Custodian from interfering with the claimant's right to have the certificates of said shares registered in his name, in the share register of the Canadian Pacific. The certificates for the said shares are in the possession of the claimant.

By leave of the Court and by consent of the parties five questions were set down for hearing and it is only with such questions we are presently concerned. Broadly stated, the issues involved in such questions, are, whether or not the claimant, who acquired from a German national, in February, 1919, for a consideration, certain Canadian Pacific shares and the certificates representing such shares, can now claim ownership of such shares, and require registration of the certificates of such shares in his name, in the share register of Canadian Pacific, in view of certain of the terms of the Treaty of Peace, and certain Canadian war measures.

It might be desirable at once to determine when the Great War ended, that being a matter of some importance here. The Treaty of Peace between the Allied and Associated Powers and Germany provides that "from the coming into force of the present Treaty the state of war will

terminate." The Treaty was signed on June 28, 1919, and was ratified by His Majesty on January 10, 1920, so therefore the purchase of the shares in question by the claimant from the German national occurred before the termination of the war, and legally a state of war continued for some time after the said purchase. Treaties only become definitely binding on being ratified. A suspension of hostilities does not bring about a termination of a state of war. That, I think, is hardly open to debate.

A certain war measure enacted by Canada in 1916, "Consolidated Orders Respecting Trading with the Enemy," hereafter to be referred to as "Consolidated Orders," figures largely in the dispute here, and must be considered. Before referring to any of the provisions of Consolidated Orders, or any of the questions raised here for decision, it would be desirable first to inquire briefly into the reason and purpose prompting the enactment of Consolidated Orders. This should be of some assistance in construing such Orders. Mr. Geoffrion argued that Consolidated Orders was designed to prevent the flow of supplies, financial and otherwise, to the enemy. In the case of *Secretary of State of Canada* v. *The Alien Property Custodian for the United States* (1), I stated that Consolidated Orders was designed primarily to prevent the use of, or control by, enemy nationals, of their property within Canada, and thus to weaken the financial resources of the enemy, and I stated that to ensure the effectual execution of this public policy, it was necessary to grant wide and arbitrary powers to some officer or officers of Government. In Great Britain, the underlying idea of the corresponding Orders was stated by Lord President Strathclyde of the Scotch Court of Session, in *Van Uden* v. *Burrill* (2), in the following words: "The principle which lies at the root of this legislation—I refer to the Trading with The Enemy Acts and also to the Royal Proclamation thereanent—is public policy, which forbids the doing of acts that will be, or may be, to the advantage of the enemy state by increasing its capacity for prolonging hostilities in adding to the credit, money or goods, or other resources available to individuals in the enemy state . . ." There can be little room for doubt but that the purpose of the

(1) (1930) Ex. C.R. 76 at 87. (2) (1916) S.C. 391.

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Trading with the Enemy Acts, enacted throughout the British Empire, and the United States, was to interdict all intercourses, commercial and non-commercial, with all enemy nationals, and to prohibit the doing of acts tending to the financial benefit of such nationals, and judicial decisions during the war show that the guiding principle was the destruction of the credit and trade of the enemy, to prevent his power of resistance being increased, and to ensure that the property of the enemy, tangible and intangible, through governmental agencies, could not be used as the basis of credit in foreign countries by the enemy owner, or by his Government. I quite agree with Mr. Geoffrion that when you come to interpret Consolidated Orders, or any other war measure, the objects of the same must be held strictly in mind, and such measures must be given that construction which will best secure the end their authors had in mind. One must consider not only the wording of the war measures but also their purposes, the motives which led to their enactment, and the conditions prevailing at the time. In time of war particularly the substance of things must prevail over form, and usually all technicalities must be swept aside.

The sequestration of enemy property authorized by Canadian war measures was not, of course, intended to operate as confiscation; the ultimate disposition of the sequestrated property of the enemy was a matter to be determined upon the termination of the war, by the Treaty of Peace, and by any legislation enacted within the terms of the Treaty of Peace, by any of the victorious Powers.

The questions may now be mentioned and they are as follows:

1. Did the Consolidated Orders respecting Trading with the Enemy, P.C. 1023, effectively prevent a person, firm or Corporation, not being a Canadian Citizen, firm or Corporation from purchasing the shares mentioned in the Statement of Claim (assuming that the said shares were registered in the names of alien "Enemies" as defined by the said Order in Council) and acquiring the legal and equitable title thereto, assuming that such purchase was effected by paying for and by obtaining possession of the certificates representing such shares, and that such certificates being endorsed in blank, were physically located outside of Canada and registered and transferable only upon the Registry of the Company, kept in the City of New York?

2. Did the Vesting Order of the Quebec Superior Court dated 23rd April, 1919, alleged to be made pursuant to subparagraph (1) of paragraph 28 of Consolidated Orders respecting Trading with the Enemy (P.C. 1023),

without notice to any of the persons, firms or corporations whose names appear upon the Schedule attached thereto, and served April 25, 1919, on the Canadian Pacific Railway only, effectively vest in the Custodian, the legal and equitable title to Shares of the Canadian Pacific Railway Company, specified in the statement of Claim, assuming that the Certificates (1) came into the possession, *bona fide* and for value of a person, firm or corporation other than the person, firm or corporation appearing upon the face of such certificate as the owner thereof, on or about the 19th day of February, A.D. 1919; (2) were endorsed in blank; (3) were physically located outside of Canada; (4) were registered in and transferable only on the register of the Company, in the City of New York; (5) were never in the possession of the Custodian, and (6) were registered in the names of "Enemies" as defined in the said Order in Council?

3. Assuming the Vesting Order described in Question Number Two to be ineffective for the purpose described in question number two, does the Treaty of Peace (Germany) Order, 1920, and Amendments effectually validate and confirm the said Vesting Order?

4. Does the Treaty of Peace, Germany, Order in Council, 1920, operate as a Vesting Order and vest in the Custodian, the legal and equitable title to shares, as described in question Two, the Certificates of which were physically located outside Canada on 10th January, 1920, and were registered on the New York Registry of the Company?

5. Whether or not, on the assumption that the certificate of Nationality filed by the Claimant herein establishes that on 10th January, 1920, the Claimant was a National of the Republic of Czechoslovakia which was recognized as an Independent Republic on 20th October, 1918, do the securities of the Claimant come within the provisions of The Treaty of Versailles, and/or the Treaty of St. Germain and/or the Treaty of Trianon?

The first question is the important one, and in fact if answered in the affirmative would dispose of all the other questions, but, as other actions similar to this are pending, it will, I think, be desirable to answer the remaining questions. The Custodian contends that the purchase of Canadian Pacific shares by the claimant, and concurrent delivery to him of the certificates representing such shares, did not confer on him any rights in respect thereof, because of the provisions of Consolidated Orders in force at the time of the purchase of such shares, and later confirmed by the Treaty of Peace and the Treaty of Peace (Germany) Order, 1920, which will be referred to in answering some of the other questions. Mr. Geoffrion was willing to assume that Spitz was a citizen of Czechoslovakia, or a citizen of an allied country, when he acquired the share certificates in question, so therefore the question of the nationality of the claimant need not be considered. The important provision of Consolidated Orders referable

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to this question is Order 6 (1) and possibly Order 6 (2), and they are as follows:

6. (1) No transfer made after the publication of these orders and regulations in the *Canada Gazette* (unless upon licence duly granted exempting the particular transaction from the provisions of this subsection) by or on behalf of an enemy of any securities shall confer on the transferred any rights or remedies in respect thereof and no company or municipal authority or other body by whom the securities were issued or are managed shall, except as hereinafter appears, take any cognizance of or otherwise act upon any notice of such transfer.

(2) No entry shall hereafter, during the continuance of the present war, be made in any register or branch register or other book kept within Canada of any transfer of any securities therein registered, inscribed or standing in the name of an enemy, except by leave of a court of competent jurisdiction or of the Secretary of State.

Order 6 (1) was designed to render ineffective any transfer of securities made by or on behalf of an enemy, unless a licence so to do were granted. It purports to make any such transfer ineffective in the hands of the transferee, and it distinctly states that no such transfer "shall confer on the transferred any rights or remedies in respect thereof," and it directs that no company or other body by whom such securities were issued or are managed shall "take any cognizance of or otherwise act upon any notice of such a transfer." And Order 6 (2) directs that during the war, no entry shall be made in any register or branch register or other book kept within Canada of any transfer of any securities therein registered, and standing in the name of an enemy, except by leave of a court or the Custodian. Some doubt might be raised as to what the words "in Canada" in Order 6 (2) may mean, though Mr. Sinclair, at the hearing, made no point concerning it. I think those words must refer to a foreign company with a Canadian register, such as Order 26 (3) contemplates. In any event those words do not, in my opinion, relieve any Canadian company from acting to the fullest extent under Order 6 (1), even if that company have a share register outside of Canada, because the issuing company is not to act on any such transfer as we are here considering.

Order 6 (1) would not be expected to prevent the transfer by delivery of any certificate, scrip, or other document of title relating to securities, by enemy nationals, to neutral or allied nationals, but it does prevent such a transfer conferring on the transferred any rights or remedies in respect thereof, and no cognizance of such transfer can

be taken, if the securities were held by an enemy national at the time of the passing of Consolidated Orders. The shares in question, in February, 1919, were held by an enemy national. Mr. Geoffrion argued therefore that the transfer to Spitz conferred on him no rights or remedies, because no licence was granted exempting this particular transaction from the terms of Order 6 (1), because the transfer was subsequent to the passing of Consolidated Orders and was therefore subject to them, and also because the transfer was made prior to the termination of the war. The Consolidated Orders was designed to ensure that enemy property in this country should not remain in the hands of the owner or his agent, and the generally accepted view is that the rights of shareholders are substantial rights of property. I do not see how the effective transfer of the property of the claimant in the securities here in question could be effectively prevented except by the means provided by Order 6. And for that purpose all British countries, and the United States, adopted the same means, and their designated officers acted in such cases as did the Custodian here. It was very important indeed to prevent so far as was possible the effective sale of foreign securities held by German nationals, in any neutral country, in order to limit the facilities of the German Government in procuring exchange for the purchase of war supplies in neutral countries, and this was no doubt one of the purposes of Order 6. Foreign securities held by German nationals would, if necessary, be commandeered by the German Government for this purpose, if they were effectively saleable abroad, and in return the German nationals would be given German Government securities. I think the British Government at one stage felt obliged to do this, in respect of United States securities held by its nationals. There can be no doubt about the purpose for which Order 6 (1) was enacted, and I can conceive of no more effective way of accomplishing the desired end. Otherwise Order 6 would be rendered almost useless. This Order should therefore be so construed as to make it operative in the sense, and to the extent, its authors intended. At the moment the submission of Mr. Geoffrion, that the transfer conferred no right or remedy upon the claimant, appears to me to be very substantial indeed. But with this Mr. Sinclair does not agree, and we must

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examine his grounds of attack against Mr. Geoffrion's construction of Order 6 (1).

Mr. Sinclair urged that four distinct limitations must be read into Order 6 (1), which, if done, Mr. Geoffrion contended, would largely defeat the purpose of that Order. Mr. Sinclair argued that the transferee must be a Canadian, that the transfer must be made in Canada, that the registration of the securities must be in Canada, and that the locus of the certificates must be in Canada. I shall deal with these points in that order.

If the first limitation is to be implied in Order 6 (1) then a German, by selling his securities to anyone but a Canadian, could defeat the very purpose for which that Order was enacted. There is no express limitation in Order 6 (1), of the nature suggested by Mr. Sinclair, and I see no reason why it should be implied. Reason and sense impel one to the conclusion that no such limitation as that the transferee must be a Canadian can be read into the Order 6 (1), and, I think, the contention is utterly untenable and without any basis whatever. The Order was intended to apply to our own nationals, the nationals of allied countries, and the nationals of any other country. Why should any distinction be made? It is immaterial what be the nationality of the transferee. I agree that if this contention of the claimant were of substance, Order 6 (1) and other Orders would be rendered practically useless.

Nor can I perceive of any ground for introducing into Order 6 (1) the limitation that the transfer must be one made in Canada. There is no suggestion of that in Order 6 (1), and it cannot be implied. It matters not where the transfer was made, or to whom made. Order 6 (1) means that a Canadian company which has issued securities cannot, after the coming into force of Consolidated Orders, take cognizance of or act upon any transfer of that security, made by an enemy national. The Order, I have no doubt, when drafted had clearly in mind the case where the transfer would be made outside of Canada, and probably that was in mind more than anything else, as it would be the thing most likely to occur in the circumstances of the time. Order 32 (1) requires a company to register a transfer of shares made by the Custodian if so empowered by a vesting order, even if the Custodian is

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not in possession of the documents of title. I have no doubt it was always expected that most transfers falling under Order 6 (1) would be those made out of Canada, but of course that Order would also relate to transfers made in Canada.

The next two points made by Mr. Sinclair, that the registration of the securities must be in Canada, and that the locus of the certificates must be in Canada, may be considered together. Again, Order 6 (1) does not require that registration of the security must be in Canada, or that the certificate of the security must be located in Canada. It says that the company issuing the securities must disregard transfers of the character in question, and it cannot act upon such transfers, if presented for registration. "Transfer" and "registration" are entirely different matters. The first mentioned point is no doubt suggested by the fact that the shares in question were registered on the share register of the Canadian Pacific in New York. The Canadian Pacific maintains a share register in Montreal, its home office, and by its charter it is permitted to maintain share registers in New York and London, which it does. It has a transfer office in the City of New York, for the transfer of shares on the New York share register, and there is there a registrar of transfers, and a transfer agent. One reason for a share register and transfer facilities in New York was the accommodation of New York Stock Exchange members, on which exchange Canadian Pacific shares are listed, and it is well known that in normal times such shares were heavily traded in on the New York Stock Exchange. The Canadian Pacific has full power and control over the share register, and the registrar and the transfer agent. It is its own share register, and the registrar of transfers and the transfer agent are its servants or agents. The Canadian Pacific being a Canadian company, the terms of Order 6 (1) would extend to its New York share register, and it would be bound to observe the terms of the Order there as well as in Canada, so far as was reasonably possible. And this it did. The charter of a company is the same abroad as it is at home. Where authorized to do business in other jurisdictions, it is still subject to the law of the home of its creation, though it must comply with the local laws of such other jurisdictions. I cannot

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conceive of any ground for reading into Order 6 (1) the limitation or condition that the locus of the certificate must be made in Canada. It is a matter of indifference in this case where the certificate is, or where registered. I do not think there is substance in either of the two points which I have just mentioned as being advanced by Mr. Sinclair.

In this connection there is one authority to which I might refer, and that is the case of *United Cigarette Machine Co.* v. *Canadian Pacific Railway Co.* (1). The case has some application here though the ground of action was one entirely different from that under discussion. The plaintiff there, in November, 1916, purchased 1,300 shares of Canadian Pacific from German corporations, the certificate of such shares being endorsed and delivered to the plaintiff. The defendant refused to transfer the shares on its share register in New York, though ultimately they were there transferred.. The shares were vested in the Canadian Custodian, pursuant to an order made by a judge of the Superior Court of the Province of Quebec, long subsequent to the date of purchase. The transferee was not a Canadian, the certificate was in the United States, the registration was in the share register of the Canadian Pacific in New York, and the transfer was not made in Canada. There we have the four points mentioned by Mr. Sinclair, yet the United States Circuit Court of Appeals, Second Circuit, held that the plaintiff did not acquire any rights in the shares, neither a chose in action nor the shares themselves, by the purchase of the shares from the German corporations and the receipt of the certificates therefor, by reason of the provisions of Consolidated Orders and the vesting order. And the Circuit Court of Appeals held that rights regarding transfer of stock of a corporation must be determined by the law of the place of incorporation of the company issuing the stocks. Subsequently the plaintiff did acquire the right to transfer the shares with the consent of the Canadian Custodian, but the reason for this is one of no interest here.

It is my opinion that Order 6 (1) did effectively prevent the claimant from acquiring a legal or equitable title, or any rights or remedies, to or in the shares under the

(1) (1926) 12 Fed. R. (2nd) 634.

transfer made to him by the German national, and the first question must be answered in the affirmative.

I come now to the second question, wherein reference is made to a vesting order. As I have already explained, Canadian Pacific was authorized by the laws of Canada to maintain a share register in the City of New York. In conformity with the requirements of Consolidated Orders, Canadian Pacific, by its chief transfer agent in New York, reported to the Custodian a list of Canadian Pacific shares there registered by their owners, and believed to belong to enemy nationals, and comprised in that list were the shares in question. In April, 1919, on the application of the Custodian, of which application the Canadian Pacific had notice, an order was made by a judge of the Superior Court of Quebec under Order 28 of Consolidated Orders, vesting in the Custodian a considerable number of Canadian Pacific shares, including those here in question. While the shares vested in the Custodian were on the New York register, the property represented by such shares was subject to the laws of the Dominion of Canada. The matter of the transfer of shares on the New York register was one to be determined by the laws of Canada, where the Canadian Pacific was incorporated, and the Canadian court, I think, had jurisdiction to make a vesting order in respect of such shares, even though on the New York share register. I see no reason for thinking that a judge of the Superior Court of Quebec would not have power to vest in the Custodian any shares of Canadian Pacific owned by, and registered in the name of, an enemy national on the New York register. The Canadian Pacific here acted upon the vesting order, and has refused since to act upon any transfer made by an enemy national of the shares in question.

It was because Canadian Pacific refused to act upon the request of the claimant to register in New York the shares he acquired from the enemy national that this proceeding was brought. The Custodian contends that if there were any defect in the vesting order that was cured later by the terms of The Treaty of Peace, and The Treaty of Peace (Germany) Order, 1920, but that is a matter for discussion later. It is suggested that the vesting order is void because the registered owner of the shares in question was not notified of the application of the Cus-

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todian for the vesting order. The Canadian Pacific was notified, and, as I have stated, has since acted upon the vesting order. It would appear to me unnecessary that the registered enemy shareholder, resident in Germany, should be notified of the Custodian's application. Order 28 does not direct that this should be done, and paragraph 2 of that Order gives the judge making the order a discretion as to the matter of notice. During the active war period the giving of such a notice would be an impractical thing, and I have no doubt it was not intended that an enemy shareholder living without Canada should have notice before any vesting order was applied for. Much that I said in discussing the first question is applicable here, and apparently the vital point for decision in connection with the second question is whether the enemy shareholder should have had notice of the Custodian's application for a vesting order, and I hold that this was not required or necessary. My answer to the second question is in the affirmative.

Questions three and four may be considered together. They involve the question as to whether or not the securities in question were vested in the Custodian by the Treaty of Peace, and the Treaty of Peace (Germany) Order, 1920. These questions require a consideration of certain provisions of the Treaty of Peace between the Allied Powers and Germany, and The Treaty of Peace (Germany) Order, 1920, the latter of which may hereafter be referred to as "the Treaty of Peace Order."

I might preface my discussion of those two questions by stating in a general way that the Treaty of Peace provided for the readjustment of rights of private property on land. The general principles underlying its complicated arrangements were that the validity of all completed war measures were reciprocally confirmed; the property of subjects of the victorious Powers on the territories of the Allied Powers might be retained and liquidated, and the owner was to look for compensation to his own State. The proceeds of the realization of such property were not to be handed over to him, or to his State, but were to be credited to his State as a payment on account of the sums payable by it under the Treaty. Between some States, Great Britain and Germany for example, and which example Canada followed, Clearing Offices were established for

the collection and payment of pre-war debts, and mixed Arbitral Tribunals were constituted for the purpose of deciding questions relating to debts, contracts, property, rights, and interests, and certain other matters arising under the Treaty of Peace. That is provided for by Section III, Article 296, of the Treaty, and this Section was adopted by Canada.

Section IV, Article 297, of the Treaty deals with "Property, Rights and Interests," and paragraphs (*b*) and (*d*) state:

(*b*) Subject to any contrary stipulations which may be provided for in the present Treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interests belonging at the date of the coming into force of the present Treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present Treaty.

(*d*) As between the Allied and Associated Powers or their nationals on the one hand and Germany or her nationals on the other hand, all the exceptional war measures or measures of transfer, or acts done or to be done in execution of such measures as defined in paragraphs 1 and 3 of the Annex hereto shall be considered as final and binding upon all persons except as regards the reservations laid down in the present Treaty.

And paragraph (*i*) states:

As regards Powers adopting Section III and the Annex thereto, the said proceeds and cash assets shall be credited to the Power of which the owner is a national, through the Clearing Office established thereunder; any credit balance in favour of Germany resulting therefrom shall be dealt with as provided in Article 243.

Annex 1 to Article 297 confirms the validity of vesting orders, and of any other orders, directions, decisions or instructions of any court or any department of the Government of any of the High Contracting Parties made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests. Annex 3 defines "exceptional war measures" as including measures of all kinds, legislative, administrative, judicial or others, "that have been taken or will be taken hereafter with regard to enemy property," and which have had or will have the effect of removing from the proprietors the power of disposition over their property, such, for example, as measures of sequestration. Acts in the execution of these measures include all orders or decrees of courts or Government departments applying

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those measures to enemy property. Annex 4 reads as follows:

All property, rights and interests of German nationals within the territory of any Allied or Associated Power and the net proceeds of their sale, liquidation or other dealing therewith may be charged by that Allied or Associated Power in the first place with payment of amounts due in respect of claims by the nationals of that Allied or Associated Power with regard to their property, rights and interests, including companies and associations in which they are interested, in German territory, or debts owing to them by German nationals, and with payment of claims growing out of acts committed by the German Government or by any German authorities since July 31, 1914, and before that Allied or Associated Power entered into the war. The amount of such claims may be assessed by an arbitrator appointed by Mr. Gustave Ador, if he is willing, or if no such appointment is made by him, by an arbitrator appointed by the Mixed Arbitral Tribunal provided for in Section VI. They may be charged in the second place with payment of the amounts due in respect of claims by the nationals of such Allied or Associated Power with regard to their property, rights and interests in the territory of other enemy Powers, in so far as those claims are otherwise unsatisfied.

Section III, Article 296, of the Treaty relates generally to Debts, payable before the war, or which became payable during the war, by a national of one of the Contracting Powers to a national of an Opposing Power, and were to be settled in accordance with certain principles laid down in the Annexes thereto, through Clearing Offices, the functions of which I need not explain. The proceeds of liquidation of enemy property, rights and interests, mentioned in Article 297, to which I have already referred, were to be accounted for through such Clearing Offices, by any Power adopting Section III. While Canada adopted Section III, Article 296, for such purposes, that is of no practical interest in this case.

The Canadian Treaties of Peace Act, 1919, provided that the Governor in Council might make such Orders in Council and do such things as might appear to him necessary for carrying out the Treaty of Peace, and for giving effect to any of the provisions of that Treaty. Under that authority there was enacted, in April, 1920, the Order cited as The Treaty of Peace (Germany) Order, 1920, which I earlier mentioned, and which superseded Consolidated Orders. Part II of the 1920 Peace Order relates to "Property, Rights and Interests." Paragraph 33 of that Order is as follows:

33. All property, rights and interests in Canada belonging on the 10th day of January, 1920, to enemies, or heretofore belonging to enemies, and in the possession or control of the Custodian at the date of this Order, are hereby vested in and subject to the control of the Custodian.

(2) Notwithstanding anything in any order heretofore made vesting in the Custodian any property, right or interest formerly belonging to an enemy such property, right or interest shall be vested in and subject to the control of the Custodian, who shall hold the same on the same terms and with the same powers and duties in respect thereof as the property, rights and interests vested in him by this Order.

This paragraph of the 1920 Peace Order was made in exercise of the option reserved in Article 297 (*b*) of the Peace Treaty. Paragraph 34 reads as follows:

All vesting orders and all orders for the winding up of business or companies, and all other orders, directions, decisions and instructions of any Court in Canada or any Department of the Government of Canada made or given or purporting to be made or given in pursuance of the Consolidated Orders respecting Trading with the Enemy, 1916, or in pursuance of any other Canadian war legislation with regard to the property, rights and interests of enemies, and all actions taken with regard to any property, business or company, whether as regards its investigation, sequestration, compulsory administration, use, requisition, supervision or winding up, the sale or management of property, rights or interests, the collection or discharge of debts, the payment of costs, charges or expenses, or any other matter whatsoever in pursuance of any such order, direction, decision or instruction, and in general all exceptional war measures or measures of transfer or acts done or to be done in the execution of any such measures are hereby validated and confirmed and shall be considered as final and binding upon all persons, subject to the provisions of Sections 33 and 41.

(2) The interests of all persons shall be regarded as having been effectively dealt with by any such order, direction, decision or instruction dealing with property, rights or interests in which they may be interested, whether or not their interests are specifically mentioned therein.

(3) No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision or instruction.

(4) The provisions of this section shall not be held to prejudice any title to property heretofore acquired in good faith and for value and in accordance with the Canadian law by a British subject or by a national of any of the Powers allied or associated during the war with His Majesty.

Paragraphs 39 and 40 might be mentioned and they are as follows:

39. No transfer, whether for valuable consideration or not, made after the sixth day of May, 1916, without the leave of some competent authority in Canada, by or on behalf of an enemy as defined in paragraphs (*a*) and (*b*) of Section 32 of any securities shall confer on the transferee any rights or remedies in respect thereof and no company or municipality or other body by whom the securities were issued or are managed shall take any cognizance of or otherwise act upon any notice of such transfer.

40. Where any property, right or interest vested in the Custodian or the title to or any record of such property, right or interest is registered, recorded or entered in any public book or in any book kept for that purpose by any public or private corporation, the Custodian may

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deliver to the person in charge of such public book or to the proper officer of such corporation a certificate that such property, right or interest is vested in the Custodian, and the certificate shall be entered in the book, and thereafter no entry concerning such property, right or interest shall be made in such book except by permission or direction of the Custodian, and such entries shall be made therein as may be directed by the Custodian in all respects as though the Custodian were registered, recorded or entered as the owner of such property, right or interest, notwithstanding any law, by-law, regulation or article, and notwithstanding that the Custodian is not in possession of any certificate, scrip, pass book or other document of title relating to such property, right or interest.

Before discussing the effect of the Treaty of Peace and the Treaty of Peace Order, upon the matters in issue here, and answering questions numbered three and four, there are two or three points raised by Mr. Sinclair which I might conveniently dispose of at this stage. It is claimed that under Article 297, Annex 4, of the Treaty of Peace there must be an express charge upon enemy property retained and liquidated, under Article 297 (*b*), and the Treaty of Peace Order. I do not think that the word "charge" has any significance beyond the fact that it means that the proceeds of liquidated enemy property may be charged with certain classes of claims. The word "charge" is used, I think, in the ordinary accounting sense, as in paragraph 43 (2) of the Peace Order, and there does not seem to be any formal procedure to be followed. It means that Canada might charge against any proceeds resulting from the liquidation of enemy property, the classes of claims mentioned in Article 297, Annex 4, but this does not give the claimant any equity of redemption therein; if the proceeds of liquidated enemy property were not fully exhausted by payment of the claims mentioned in Annex 4, or elsewhere, then the surplus would be dealt with under Article 243. I fail to appreciate how this contention can be of any practical importance to the claimant. The sole right or claim of the enemy national, whose property has been retained and liquidated by Canada, is one for compensation against his own State, which undertook to compensate her nationals in respect of the sale or retention of their property by any of the Allied Powers. The Custodian must deal with the German State in these matters and on the hypothesis that a credit balance would sometime appear in favour of Germany at the Clearing Office, that would be reckoned as a

credit to the German State and not to any German national, and dealt with under Article 243 of the Treaty.

Again, it was argued by Mr. Sinclair that a fresh vesting order should have been made after Consolidated Orders ceased to exist. The 1920 Peace Order operated as an absolute vesting order, and it is no longer necessary to apply to the courts for such an order. I find nothing in the Treaty, or in the Treaty of Peace Order, on which can be founded the contention that another vesting order was necessary and this point, in my opinion, cannot be sustained. Further, the claimant, in some way, which I am not sure that I fully understand, seeks support for his contentions here in an agreement made between Canada and Germany in 1930. I do not propose to state the terms of that agreement and I content myself with saying that the agreement does not purport to give any rights or remedies to German nationals or their assignees. It is merely an agreement between the two States, Germany and Canada, in respect of certain property, which does not so far as I can see comprise the Canadian Pacific shares here in question, but in any event enemy nationals can derive no advantage from the agreement. I therefore think that this point is not one of substance.

Now what are the consequences flowing from the provisions of the Treaty of Peace, and the Treaty of Peace Order, 1920. Hostilities had ceased, and, barring untoward events, the war would terminate upon the signing of the Treaty and its Proclamation. The Treaty when proclaimed, would bring all war measures, including Consolidated Orders, to an end. The Treaty confirmed all exceptional war measures and all acts done under them by the Allied Powers. This confirmed Consolidated Orders and all acts done under them, which would include Order 6, and the vesting order. Any taint of invalidity in any step taken or act done under the terms of Consolidated Orders was removed, and any excess of authority exercised was validated. The Treaty gave the Allied Powers the right to retain and liquidate all property, rights and interests belonging to German nationals, at the date of the coming into force of the Treaty, in any territory of the Allied Powers, and the German national was to be indemnified by his own State for any of his property so retained under the Treaty and the Treaty of Peace Order. In pursuance

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of this right under the Treaty, the Treaty of Peace Order, 1920, vested all German property in Canada in the Custodian, and it ratified all things that had been done under Consolidated Orders, including the vesting order. At that time the shares in question had been vested in the Custodian. Altogether, it would not seem to permit of any possible doubt but that the securities in question came into the possession and control of the Custodian and no enemy national has any right or claim thereto, or in their proceeds, now or hereafter.

My answer to questions three and four is that the Treaty of Peace and the Treaty of Peace Order effectually validated and confirmed the vesting order, and also operated as a vesting order to vest in the Custodian the legal and equitable title to the shares in question.

Now as to question five. Mr. Geoffrion's submission upon this question was, as has been stated already, that the nationality of the transferee was immaterial. For the reasons already stated no national could receive an effective transfer from an enemy national. I agree that the matter of the nationality of the transferee is irrelevant. My answer to question five is that the nationality of the transferee, under any Treaty, is immaterial, and affords no support to the several contentions herein advanced on behalf of the claimant.

I do not think there is anything further I can usefully add to the foregoing answers to the questions stated.

There will be no order as to costs.

Judgment accordingly.