SUPPLEMENTAL BRIEF OF THE UNITED STATES

IN SUPPORT OF

THE PLENARY POWER OF CONGRESS OVER ALIEN ENEMIES, AND THE CONSTITUTIONALITY OF THE ALIEN ENEMY ACT (REVISED STATUTES, SECTIONS 4067–4070).

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The alien enemy act of July 6, 1798 (Revised Statutes, Secs. 4067–4070), was enacted by Congress under its power and duty to protect the Nation against peril from enemies in time of war, and its constitutionality can not be doubted in the light of such object and of the circumstances under which its provisions are intended to operate.

The statute now attacked for unconstitutionality, Revised Statutes, sections 4067–4070 (see Appendix A of this brief), was first enacted as the act of July 6, 1798 (1 Stat. 577), and was known as the alien enemy act.

It must not be confused with the separate act known as the alien act, enacted June 25, 1798 (1 Stat. 570),[1] which with the sedition act of July 14,

[1] The legislative history of the alien enemy act is set forth in this brief (*infra*, p. 6–20). It may be noted, in order to avoid confusion, that the alien act was reported as a bill in the Senate, May 4, 1798 (Annals of Cong., 5th Cong., 2d Sess., p. 544). It was debated May 8, 10, 25, 28, 29, 31, June 1 (pp. 564 *et seq.*); it was recommitted June 1, reported back June 4, and passed to a third reading June 7. In the House, after a motion by Mr. Sewall, May 16, 1798 (p. 1725), a bill was reported June 4 (p. 1868). The Senate bill was received in the House June 8 (p. 1896). The bill was debated June 16, 18, 19, 21 (pp. 1954–2027), and was passed June 21 by a vote of 46 to 40. The Senate concurred in the House amendments June 22, and the bill became a law, June 25, 1798.

For views on the constitutionality of the alien act, see Judge Story and Judge Cooley in Cooley's Edition of Story's Constitutional Law, section 1294. See also an able article on "Aliens under the Federal Laws," in Illinois Law Review (1909), Vol. IV, pp. 130 *et seq.* (which, however, fails fully to discriminate between the alien act of June 25, 1798, and

1798 (1 Stat. 596), are commonly referred to as the alien and sedition laws, and which by their own terms were only to be in force for a period of two years.

The alien act applied in times of peace to alien citizens of friendly nations who might be in the United States.

The alien enemy act applied only in times of war or threatened war; it set forth the powers of the Nation over foreign enemies within its borders; it affected only those to whom the rules of war under the law of nations applied, and to whom no protection was due from the United States except such as it chose to bestow, with due regard to its own safety and the humane policy of modern Christian nations.

It is in the light of the object of the statute and the time and circumstances under which its provisions are to operate that its constitutionality must be considered. (*United States* v. *Anderson* (1869), 9 Wall. 56, 65.)

The attack in this case is made upon the mode in which the Congress of the United States has exercised the highest function possessed by a legislative body—the function of protecting the Nation against foreign enemies.

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the alien enemy act of July 6, 1798). See also remarks of Field, J., on the alien act in the *Chinese Exclusion Case* (1889), 130 U. S., pp. 610, 611. See also Tucker's Blackstone, Vol. I, p. 301; Von Holst's Constitutional History of the United States, Vol. I, p. 142; Daniels, J., dissenting in *The Passenger Cases* (1849), 7 How., p. 514; Senate Document 873, 62d Congress, 2d Session, on the Alien and Sedition Laws—Debates in the House of Delegates of Virginia.

As Yeates, J., said in *Lockington's Case* (1813), Brightly, Pa., p. 289, a case treated at length *infra:* "The great prominent feature which is exhibited to our view in every part of this law, is, that its provisions were made for the public safety; and although the 'dictates of humanity and national hospitality' were not unattended to, their extent was limited to the *salus populi.*"

The first right of every sovereignty is self-preservation. The first duty of the National Legislature is to safeguard the Nation's existence.

Every portion of the Constitution, particularly its restrictions upon Congress in respect to the rights of individuals, must be construed with due regard to this primary right and duty; for disaster to the Nation from foreign enemies imperils the Constitution itself.

"To preserve its independence, and to give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated," said the Supreme Court in the *Chinese Exclusion Case* (1889), 130 U. S. 581, 606.

"The entire strength of the Nation may be used to enforce in any part of the land the full and free exercise of all natural powers and the security of all rights entrusted by the Constitution to its care," said the court in *In re Debs* (1895), 158 U. S. 564, 582.

"When it comes to a decision by the head of the State upon a matter involving its life, the ordinary

rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process," said the court in *Moyer* v. *Peabody* (1909), 212 U. S. 78, 85.

To the present situation the following remarks of Judge Leavitt in the Circuit Court for the Southern District of Ohio, in 1863, in *Ex Parte Vallandigham*, 28 Fed. Cases, No. 16,816, p. 921, are peculiarly applicable:

> In my judgment, when the life of the Republic is imperiled, he mistakes his duty and obligations as a patriot who is not willing to concede to the Constitution such a capacity of adaptation to circumstances as may be necessary to meet a great emergency, and save the Nation from hopeless ruin. Self-preservation is a paramount law, which a nation as well as an individual may find it necessary to invoke. Nothing is hazarded in saying that the great and farseeing men who framed the Constitution of the United States supposed they were laying the foundation of our National Government on an immovable basis. * * * They did, however, distinctly contemplate the possibility of foreign war, and vested in Congress the power to declare its existence, and "to raise and support armies," and "provide and maintain a navy." They also made provision for the suppression of insurrection and rebellion. They were aware that the grant of these powers implied all other powers necessary to give them full effect.

The Government contends that:

(1) The congressional debates in 1798 at the time of the passage of the Alien Enemy Act explain the necessity to preserve the country against the operations of alien enemies, and show that practically no opposition was made on constitutional grounds.

(2) The statute has been the subject of decisions by four Justices of the Supreme Court without any intimation of unconstitutionality. Text writers like Kent, Rawle, and Story have cited the statute.

(3) The power of Congress over the persons and property of alien enemies resident in the United States in time of war is plenary and uncontrolled; it is derived from the power of Congress under the Constitution to declare war and to make rules concerning captures on land and water as well as from the power residing in the sovereign Nation under the common law and under the law of nations.

(4) The plenary power of the Congress of the United States to take the persons and property of resident alien enemies has been expressly upheld by the Supreme Court.

(5) The exercise by Congress of its war powers with reference to resident alien enemies is not so restricted by the due process clause of the fifth amendment as to entitle an alien enemy to recourse to the courts in time of war.

(6) Due process of law, under the common law, gave to a resident alien enemy no rights which he could maintain in the courts. He had no rights or

privileges except such as arose from a license or other form of protection which the sovereign chose to grant; his person or property could be seized and he had no redress.

I.

LEGISLATIVE HISTORY OF THE ACT OF JULY 6, 1798 (REV. STAT. SECS. 4067-4070).

It is to be noted in the first place that at the time when the statute in question was passed the United States was on the verge of a war with France. In fact, nine months later (that is, when the act of March 2, 1799, relative to ships retaken from the enemy, was passed) the United States was held by the Supreme Court in *Bas* v. *Tingy* (1800), 4 Dallas, 37, to be in a state of "imperfect war" with France, "a qualified state of hostility," France being "a partial enemy."

By the act of May 28, 1798 (1 Stat. 561), the President had been authorized to seize any armed vessels which had committed, or which were hovering round the coast for the purpose of committing, depredations on American vessels, and to retake any American vessel which had been captured.

By the act of June 13, 1798 (1 Stat. 565), commercial intercourse had been suspended between the United States and France.

By the act of June 25, 1798 (1 Stat. 572), American vessels were authorized to oppose and defend any attack by French vessels and to repel by force any assault by and to capture any French vessel, and to retake any American vessel which had been captured;

and the President was authorized to arm merchant vessels.

By the act of June 28, 1798 (1 Stat. 574), the President was authorized to imprison and capture any hostile persons found on any American vessel which had been recaptured, and armed French vessels brought into the United States were to be forfeited.

President Adams, on July 7, 1798, appointed Gen. Washington as Lieutenant General and Commander in Chief for the armies raised or to be raised for the service of the United States; and Washington, in accepting the appointment July 13, 1798, referred, in words which with startling aptness might be used to describe the conditions of to-day, to "*the conduct of the Directorate of France toward our country, their insidious hostility to its Government, their various practices to withdraw the affections of the people from it, the evident tendency of their acts and those of their agents to countenance and invigorate opposition, their disregard of solemn treaties and the laws of nations, their war upon our defenseless commerce, their treatment of our ministers of peace;*" and he said, "*satisfied, therefore, that you have sincerely wished and endeavored to avert war, exhausted to the last drop of reconciliation, we can with pure hearts appeal to heaven for the justice of our cause.*"

In his special message to Congress, March 19, 1798, President Adams had recommended that measures be taken for protection and defense, and called upon Congress "to manifest a zeal, vigor, and

concert in defense of the national rights in proportion to the danger with which they are threatened."

It thus appears that a state of war existed which amply called for the exercise of the war powers of Congress.

The internal conditions of the United States also demanded protection, for it was filled with hostile aliens. As was stated by Mr. Rutledge in the House of Representatives in the debate which is set forth, *infra*, "intriguing agents and spies . . . are now spread all over the country." Mr. Otis spoke of the aliens who were "extremely instrumental in fomenting hostilities against this country," and "also in alienating the affections of our own citizens," and that "an army of soldiers would not be so dangerous to the country as an army of spies and incendiaries scattered through the continent."

It thus appears that in 1798 the United States was facing a situation almost exactly parallel to the situation in 1917; and it was out of such a situation that the statute in question arose. Its history, as appears in the Annals of Congress, Fifth Congress, 1797–1799, volume 2, is as follows:

May 1, 1798 (p. 1566), Mr. Sewall, from the Committee for the Protection of Commerce and the Defense of the Country, who were instructed "to inquire and report whether any and what alterations were necessary in the naturalization act, and into the expediency of establishing, by law, regulations respecting aliens arriving, or residing, within the United States," reported three resolutions, saying

that "some precautions against the promiscuous reception and residence of aliens, which may be thought at all times advisable, are at this time more apparently necessary and important, especially for the securing or removal of those who may be suspected of hostile intentions."

The three resolutions were agreed to May 3, in the Committee of the Whole of the House, after debate (p. 1573). The third resolution was as follows:

> *Resolved*, That provision be made, by law, for the apprehending, securing, or removing, as the case may require, of all aliens, being males, of the age of fourteen years and upwards, who shall continue to reside or shall arrive within the United States, being natives, citizens, or subjects of any country, the Government whereof shall declare war against the United States, or shall threaten, attempt, or perpetrate any invasion or predatory incursions upon their territory, as soon as may be after the President of the United States shall make proclamation of such event. Providing, in all cases where such aliens are not chargeable with actual hostility, that the period settled by any treaty with such hostile nation, or other reasonable period, according to the usage of nations, and the duties of humanity, shall be allowed for the departure of such aliens, with all their effects, from the territory of the United States; and excepting all cases of such aliens to whom passports or licences of residence may be granted consistently with the public safety.

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The debate was chiefly on the question whether there should be added to the words "the Government whereof shall declare war against the United States" the words "or shall authorize hostilities against the United States." It was finally decided to amend the resolution by striking out the first phrase referred to and by inserting the words "between which and the United States there shall exist a state of declared war."

Throughout the debate it was stated to be the purpose of the resolution to vest in the President the power to remove and restrain alien enemies. Thus Mr. Rutledge said that (p. 1574)—

> In fact, in the situation of things in which we are now placed, the President should have the power of removing such intriguing agents and spies as are now spread all over the country. What would be the conduct of France, if in our situation? In 24 hours every man of this description would either be sent out of the country or put in jail, and such conduct was wise.

Mr. Otis said (p. 1575):

> When an enemy authorized hostilities, that was the time to take up that crowd of spies and inflammatory agents which overspread the country like the locusts of Egypt, and who were continually attacking our liberties. The provision would doubtless be exercised with discretion. There might be Frenchmen in this city and others (and he doubted not there were) who were peaceable, well-disposed per-

sons, and against whom it never could be thought necessary to exercise this power; but there were other persons, not only in this city, but in others, who have not only been extremely instrumental in fomenting hostilities against this country, but also in alienating the affections of our own citizens; and it was men of this description whom he wished to remove from the country.

It is proposed by this resolution to give the President the power to remove aliens, when the country from which they come shall *threaten* an invasion. * * * His opinion was, that something ought to be done which should strike these people with terror; he did not wish to give them an opportunity of executing any of their seditious and malignant purposes; he did not desire, in this season of danger, to *boggle* about slight forms, nor to pay respect to treaties already abrogated, but to seize these persons, wherever they could be found carrying on their vile purposes.

Mr. Sitgreaves said (p. 1577):

The business of defense would be very imperfectly done if they confined their operations of defense to land and naval forces and neglected to destroy the cankerworm which is corroding in the heart of the country. There could be no question on this subject. It is well understood by every member of the community. There is no occasion for specific proof that there are a great number of aliens in this country from that nation with whom we have at present alarming differences; that

there are emissaries amongst us who have not only fomented our differences with that country, but who have endeavored to create divisions amongst our own citizens. They are assiduously employed at this moment, and it is much to be lamented that there exists no authority to restrain the evil. It was therefore peculiarly incumbent on Congress to add to their other measures of defense, such powers as will protect the country against this evil. He believed this could not be effected without the adoption of some such principle as that under consideration. If the power was too limited, the enemy would not be met. There could be no difficulty in point of right. All understand the rights to which aliens are entitled by the laws of nations. They are no more than the rights of hospitality, and this right varies according to the relation in which the country from which they come, and that in which they reside, is peaceable, or otherwise.

We do not owe to the citizens of France residents in this country (since France had been mentioned) the same hospitalities which we owe to those foreigners who are alien friends; though there were rights of hospitality which could not be done away with in time of war, particularly as it respects alien merchants, which were provided for in this resolution. And except a person had an actual agency in designs which would endanger the peace of the country, though he was ordered out of the country, a free passage would be given to himself and

> effects; and if actually engaged in designs against the country, there would be a strong necessity for restraining the liberty of any such persons.

Mr. Gallatin said (pp. 1581 and 1582) that there was "a difference in the relation between alien subjects of a nation with whom we are at war, and those of a nation with whom we are in a state of actual hostility," and that it was "a sound principle that alien enemies might be removed * * * by a principle which existed prior to the Constitution, and coeval with the law of nations."

May 8, 1798, the resolution was agreed to in the House and referred to the Select Committee on Commerce and Defense, to report a bill accordingly (p. 1631).

May 18, 1798 (p. 1773), Mr. Sewall for the committee reported a bill which was debated in the Committee of the Whole House May 22, 1798 (pp. 1785, 1792).

A motion by Mr. Lyon to strike out of the bill reference to "threatened" war was rejected by a vote of 44 to 39.

The chief objections raised were to that portion of the bill which made it a crime in section 3 to "harbor or conceal any alien liable as an enemy, knowing him to be such, after proclamation by the President." On motion of Mr. Bayard, the penalty was changed so as to make the above acts a misdemeanor—44 to 25. Mr. Bayard thought the offense was defined in too indefinite terms.

Mr. Gallatin opposed the third section of the bill and moved to recommit it, saying that his arguments went wholly against that, and that his objections to the other parts of the bill were immaterial. He opposed the requirement of the third section that all justices, judges, and other officials should be bound to carry into effect the proclamation of the President. His motion to recommit was lost by the casting vote of the Speaker by vote of 38 to 38, and the bill was ordered to be engrossed for a third reading.

Mr. Sewall pointed out that the intent of the bill was not to punish crimes committed by the alien enemy, but to provide for the public safety by lodging in the President the power to regulate the conduct of alien enemies. He said (p. 1790):

> The gentleman from Pennsylvania, in order to bring forward this motion, has shut his eyes to the intention of the bill. He says it is a bill for punishing crimes which are not defined. He never knew that alien enemies were guilty of any offense merely as such. It is a bill to provide for the public safety in certain cases. In the event of a war with France, all her citizens here will become alien enemies, but neither this bill nor common sense would consider them as offenders. They may be offenders, but not because they are alien enemies; nevertheless it is necessary to provide for the public safety, and in all countries there is a power lodged somewhere for taking measures of this kind. In this country this power is not lodged wholly in the Execu-

tive; it is in Congress. Perhaps, if war was declared, the President might then, as Commander in Chief, exercise a military power over these people; but it would be best to settle these regulations by civil process. They would be regulated by treaties as well as by the laws of nations. The intention of this bill is to give the President the power of judging what is proper to be done, and to limit his authority in the way proposed by this bill. In many cases it would be unnecessary to remove or restrict aliens of this description; and he believed it would be impossible for Congress to describe the cases in which aliens or citizens ought to be punished, or not; but the President would be able to determine this matter by his proclamation.

Mr. Otis said (pp. 1790, 1791):

Will gentlemen think it right * * * to declare that alien enemies shall only be removed, or otherwise restricted, on conviction of some overt act to be specified in the act? They are at present liable, with all other persons, to be punished for crimes; so that a regulation with this view would be unnecessary. But there may be cases where the conduct of such persons being extremely suspicious, they ought to be taken into custody, though no positive crime could be proved. * * * It would be best to vest a discretionary power in the Executive to secure and take care that these men should do no injury. And this could not be looked upon as a dangerous or exorbitant power, since the President would have the power, the moment

war was declared, to apprehend the whole of these people as enemies, and make them prisoners of war.

* * * This bill ought rather to be considered as an amelioration or modification of those powers which the President already possesses as Commander in Chief, and which the martial law would prove more rigorous than those proposed by this new regulation. Unless gentlemen were disposed, therefore, to suffer those men to go at large, and to carry on a correspondence with their countrymen and our enemy; unless they will consent to suffer a band of spies to be spread through the country, from one end of it to the other, who, in case of the introduction of an enemy into our country, may join them in their attack upon us, and in their plunder of our property, nothing short of the bill like the present can be effectual.

If the bill was recommitted, he did not think any definite provision could be made. It was necessary the President should have the power of judging in this case, and that punishment ought not to depend upon the slow operations of a trial. Though possessed of this power, the President would doubtless suffer all such persons to remain in the country as demeaned themselves peaceably; but when they discovered a contrary spirit, he would treat them accordingly.

May 23, 1798 (pp. 1793–1796), the debate was continued, Mr. R. Williams and Mr. Gallatin again opposing the power proposed to be given to the President, although Mr. Gallatin stated that he

"thought the two first sections of the bill should be left at large as they are."

June 25, 1798 (p. 2034,) the bill, with the third section amended, was reported and ordered to be read a third time; and on June 26, 1798 (p. 2049), the bill passed the House, 52 votes being cast in its favor (no record being made of any vote cast contra).

In the Senate, June 26, 1798, the bill was ordered to a second reading (p. 590). July 2 it was reported from committee with amendments which were adopted (p. 596), and July 3 (p. 598) it was read a third time and passed with amendments, and on the same day the House concurred with the Senate amendments. The bill became a law July 6, 1798.

After 1798, Congress twice recognized the alien enemy law as valid; first by amending it by the act of July 6, 1812, ch. 130 (2 Stat. 781), as follows:

> That nothing in the proviso contained in the act entitled "An act respecting alien enemies," approved on the sixth day of July, one thousand seven hundred and ninety-eight, shall be extended or construed to extend to any treaty, or to any article of any treaty, which shall have expired, or which shall not be in force, at the time when the proclamation of the President shall issue.

Second, by recognizing the right of the United States to apprehend or remove aliens, in the naturalization act of July 30, 1813, ch. 36 (3 Stat. 53), as follows:

> That persons resident within the United States, or the Territories thereof, on the eight-

> eenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration according to law of their intentions to become citizens of the United States, or who by the existing laws of the United States were on that day entitled to become citizens, without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies at the times and in the manner prescribed by the laws heretofore passed on that subject: *Provided*, That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

In the debates on the latter act, Members of Congress recognized the right of the United States to arrest or remove alien enemies as then existing, and argued for mitigation of the naturalization laws so as to allow naturalization of alien enemies.

Thus, Mr. Kennedy, in the House of Representatives, July 19, 1813 (Annals of Congress, 13th Cong., 1813–14, vol. 1, pp. 465, 466, 468), said:

> The situation of alien enemies must be disagreeable, inconvenient, and embarrassing to them beyond measure. By the declaration of war in which we are engaged, they are deprived of all their civil rights, they can not institute a suit for the recovery of their just demands, nor can they repair themselves in damages for any maltreatment they may

receive in their persons or property. They are subject and liable, according to a power vested in the President by an act passed in 1798, to be exiled from their homes, their families, and property, to any distant place designated by him within the limits of the United States, or at his pleasure may be ordered entirely out of the country.

And even if they are not removed in the manner I have mentioned, yet they are continually harrassed with the marshals' advertisements ordering them to register themselves or be subject to severe and heavy penalties. Those of them in the State that I in part represent, who reside in 40 miles of tidewater and who are in pursuit of mercantile business and have supported their families by that means, are deprived of the privilege and ordered to desist from the same (pp. 465, 466).

Sir, there is a fatality that seems to attend this bill. Formerly, it passed both Houses of Congress, and was rejected by the President. Last session it was postponed from time to time, under various pretenses, until it was too late to act upon it; and at this session, it has been committed, laid over, and at last reported in this mutilated shape. Permit me here to observe, that I have understood from good authority, though not from the President himself, that the bill was refused his sanction because it contained no provision for the removal of alien enemies prior to their naturalization, and that he has no objections to the bill in its present shape (p. 468).

The validity of the statute was also apparently assumed in the opinion of Attorney General Caleb Cushing of August 31, 1855 (7 Op. Att'y Gen. 453, 454).

II.

The cases arising under or referring to the act of July 6, 1798 (Rev. Stat., secs. 4067–4070), contain no expression of doubt by the courts as to its constitutionality, and four justices of the United States Supreme Court have participated in these cases.

The first cases arising under the statute occurred in the War of 1812—one decided in the Supreme Court of Pennsylvania in 1813, *Lockington's Case*, Brightly (Pa.), 269, and one in the Circuit Court of the United States in 1817, *Lockington* v. *Smith*, 1 Peters C. C. 466. The State papers, by means of which the President put the statute into operation, do not appear in full in the printed reports of these cases, nor can they be found in any printed Government or other publication; the original pleas of the defendant in *Lockington* v. *Smith*, on file in the office of the clerk of the District Court of the United States for the Eastern District of Pennsylvania, at Philadelphia, however, contain a statement of the official proceedings of the President acting under this statute. From these original pleadings, it appears that after the date of the act of Congress declaring war, June 18, 1812 (2 Stat. 755), and after the proclamation of war with Great Britain, June 19, 1812, the President, by public notice issued from the Department of State, July 7, 1812, directed all British subjects in the United States to report to the United States mar-

shals their names, age,, time they had been in the United States, the persons composing their families, their place or residence, and their occupation or pursuit, and whether they had applied for naturalization; alien enemies arriving from foreign countries were to report to the marshal immediately on arrival; no alien enemy could proceed from a port or place within one district to a port or place in another district without a special passport from the marshal or collector of customs; alien enemies permitted to travel were, forthwith on arrival, to report to the marshal and exhibit their passports.

On February 23, 1813, by public notice issued from the Department of State, the President ordered that "alien enemies residing, or being within forty miles of tidewater,should forthwith apply to the marshals of the States, or Territories in which they respectively were, for passports to retire to such places, beyond that distance from tidewater, as should be designated by the marshals."

On the same day, February 23, 1813, by written directions from the Secretary of State, "all those to whom the said public notice and direction of the same date had reference, engaged in commerce, who did not immediately conform to the said requisition and direction, were to be taken into custody and conveyed to the place assigned to them, unless special circumstances should require indulgence, and . . . all those of other occupations whom it might not be deemed proper to suffer to remain within the prescribed distance of tidewater, should be notified to repair to the

interior of the country, to which they were enjoined to confine themselves."

On March 12, 1813, by instructions from the Department of State to the marshals, the regulations concerning aliens, established in conformity to the notice of February 23, 1813, and the accompanying instructions to marshals of that date, were to be enforced, and the persons designated for removal were immediately to repair to the places assigned them for residence.

On April 15, 1813, the marshals were informed and instructed by notice from the Department of State that the President had appointed John Mason, Esq., of Georgetown, in the District of Columbia, Commissary General for prisoners of war, including the superintendency of alien enemies, whose instructions were to be obeyed unless otherwise directed by the Department of State.

On May 31, 1813, the Commissary General for prisoners addressed a circular letter to all marshals, as follows:

> The President being desirous of defining more particularly the treatment of alien enemies, and of extending as much indulgence to them as may be compatible with the precautions made necessary by the present state of things, directs, that, in regard to such as may be within your district, you will be governed by the following rules. You will cause to be removed, as heretofore prescribed, if not already done, under the former orders from the Department of State, all who are not

> females or under 18 years of age, who are not laborers, mechanics, or manufacturers, arrived in the country previous to the declaration of war, and actually employed in their several vocations; subject, however, to the following modifications.

On November 12, 1813, the Commissary General for prisoners, issued a circular letter instructing the marshal that—

> it having been found that the lenity shown to alien enemies, remaining in the country, had frequently been abused by that class to which a residence remote from tidewater had been assigned, and that some had gone off clandestine to the enemy, it had been determined to guard against such abuses in future, by requiring an honorable engagement from all such persons to be of good conduct, and to observe the limits prescribed to them, wherefore the said marshal was instructed by the said Commissary General as aforesaid, by order of the President of the said United States with the least possible delay, after the receipt of the said letter of instructions, to offer for execution to every alien enemy within the said Pennsylvania district, who had been, or should be thereafter removed from the vicinity of tidewater, a parole of honor, according to a form thereof inclosed in the said letter of instructions, and if refused to place every person so refusing without distinction forthwith in close confinement and since the same could not when understood be considered a harsh measure, by any of those of evil design, the said marshal was

> by the said letter of instructions requested to explain to all concerned, why it had become necessary.

On July 10, 1812, the marshal for the district of Pennsylvania notified all British subjects to report, and July 18, Lockington reported at Philadelphia as an alien enemy engaged in and connected with commerce. On March 13, 1813, Lockington applied for a passport to retire to Lancaster, which destination upon his application was later changed to Reading (a place beyond 40 miles from tidewater, designated by the marshal as the place of retirement); he was sent there and remained there until November 9, 1813, when he was found at large in Philadelphia in violation of the regulations. On being directed to retire to Reading, he refused, whereupon the marshal took him into custody and confined him in the debtors' apartment of the State prison of Pennsylvania.

On November 12 the Commissary General for prisners, Mason, instructed the marshal that—

> the course he had taken * * * was entirely correct, that the regulations of the Government should be enforced, that if rigor were made necessary by the conduct of persons who had constantly experienced mildness at its hands, rigor must be used,

and that Lockington, however, might be offered a parole.

On November 12 Lockington applied for a writ of *habeas corpus* to the Chief Justice of the Supreme Court of Pennsylvania, which petition was denied, and the prisoner remanded.

On November 17 Mason notified the marshal that no alien enemy prisoner was to be liberated on parole except by special order.

On November 20 Lockington was offered a parole and refused to sign.

In December, 1813, Lockington sued out a new writ in the Supreme Court of Pennsylvania, which heard the case on January 1, 1814, and remanded the prisoner.

On April 19, 1814, Lockington was offered and signed a parole, and was granted a passport to proceed to Reading,

> and to go from time to time at his own discretion to a distance therefrom not exceeding five miles upon condition that he gave his parole of honor, not to withdraw from the bounds so prescribed without leave for that purpose from the said marshal, that he would behave with due respect to the laws and authorities of this country, and also that he would not directly or indirectly carry on a correspondence with any of the enemies of the United States, or receive, or write any letter or letters to, or from, any alien enemy, or enemies whomsoever, but through the hands of the said marshal in order that they might be read and approved by him, thereby declaring that he had given his parole of honor accordingly and that he would keep it inviolably, whereupon and under the faith, sanction and effect of the said parole of honor.

Lockington then, in April, 1814, sued the marshal, John Smith, in the United States Circuit Court for

the District of Pennsylvania, for assault and battery and false imprisonment. The defendant filed special pleas of justification, January 27, 1817, which were demurred to. The case was argued at the April term, 1817, and decided at the October term, 1817.

From the original copies of the pleas filed by the defendant, the following additional facts appear (which are summarized only in the printed report of the case).

On April 19, 1813, by directions issued from the office of the Commissary General for prisoners, the marshals were instructed that—

> it by no means followed, that because an alien enemy was more distant from the navigable waters than the line drawn by the general instructions from the Department of State, beyond which to remove persons of that description by way of precaution, that he was to be permitted to remain, under reprehensible conduct undisturbed; in the case of an alien enemy, who should so far abuse the indulgence and hospitality of the country in time of war, with his nation, as to declare his adherence to the enemy, and disposition to support their interest, or, who should attempt to distrust the confidence reposed in their Government by our citizens, he, the said marshal, should, first taking care to establish the fact, place him immediately in close confinement.

The marshal averred that Lockington, while first residing at Reading upon his passport, and while he resided there afterwards under the parole, and while he was restrained in prison in Philadelphia, "became

and was chargeable with actual hostility toward the people and Government of the said United States of America, and with other crimes against the public safety by declaring his adherence to the said hostile nation, with which war then and there prevailed and had been proclaimed as aforesaid, by declaring his intention to escape from his said restraint and security, and to join the said hostile nation, in violation of the regulations as aforesaid found necessary in the premises and established for the public safety, by the President of the United States as aforesaid, and by declaring that he corresponded with the subjects of the said hostile nation, and had intercourse with them." Whereupon, "the marshal averred, it became the duty of the said marshal of the said district in which the said alien enemy had been apprehended "to execute the orders of the President of the United States in the premises."

Lockington's Case in the State Court.

In the State court the case is reported as ***Lockington's Case,*** Brightly (Pa.), 269.

It is important to note the exceptions to the petition for the writ of *habeas corpus,* which are set forth in the return filed by the marshal. These do not appear in the printed report of the case, but appear in the minute book of the Supreme Court of Pennsylvania from 1806 to 1816 in the office of the prothonotary of the Supreme Court of Pennsylvania in and for the eastern district, at Philadelphia. The last three exceptions deal with the power of a State court to

issue *habeas corpus*, and have no bearing on the present issue. The first five exceptions, however, present the precise question now at issue, and state very forcibly the reasons for upholding the statute:

> 1. Because by the Constitution of the United States Congress possesses exclusively the power "to declare war, grant letters of marque and reprisal, and make rules concerning captives on land and water."
>
> 2. Because by the strict principles of the law of nations, the citizens or subjects of the enemy, residing within the United States at the time of the declaration of hostilities against the United Kingdom of Great Britain and Ireland, were liable to be made prisoners of war. The strict principle of the law has been liberally and honorably relaxed in modern times through the medium of treaties and statutes and of proclamations; but the power to relax the principle is connected inseparably with the power to enforce it, or, in other words, with the power to declare the war.
>
> 3. Because the acts of Congress have stated and limited the indulgence to be shown to alien enemies; and have assigned to Federal and State authorities, such portions of jurisdiction, on the subject, as public policy, and private justice were deemed to require. So far, therefore, as Congress have empowered the honorable Chief Justice to take cognizance of the case of an alien enemy, in the actual custody of the marshal of the district of Pennsylvania under the authority hereinbefore set forth, and no further, a jurisdiction may be sustained on the present occasion.

4. Because the acts of Congress have not authorized a single judge, or justice, of a State, to take cognizance of the case of an alien enemy, for the purpose of apprehending an alien enemy; examining and hearing any complaint against him; ordering him to be removed out of the territory of the United States, or to give sureties of his good behavior, or to be otherwise restrained, conformably to the proclamation or other regulations, which the President of the United States has established in the premises nor for any other purpose whatsoever; that the acts of Congress have for certain specific purposes vested a jurisdiction in the several courts of the United States, and of each State, having criminal jurisdiction, and in the several judges and justices of the courts of the United States, but such jurisdiction is only vested upon complaint against an alien enemy, who shall be resident and at large, to the danger of the public peace, or safely and contrary to the tenor or intent of the President's proclamation and regulations.

5. Because the acts of Congress have not authorized, any Federal, or State, court, nor any Federal or State judge or justice to discharge an alien enemy from the custody of the marshal, or from any restraint, to which he has been subjected by the regulations, directions and orders, of the President of the United States, established and issued in due form of law.

In view of the decision of the court, the point must be emphasized that it was contended by the United

States then, as now, that "by the strict principle of the law of nations," alien enemies residing within the United States, "were liable to be made prisoners of war," and that "the power to relax the principle is connected inseparably with the power to enforce it, or, in other words, with the power to declare the war." Such power inheres in Congress alone and not in the courts.

In his decision on the first petition for *habeas corpus*, Chief Justice William Tilghman held, first, that the apprehending, restraining, and securing mentioned in the first section of the bill was not "intended solely for the purpose of removal out of the United States" (p. 278).

> It is a provision for the public safety which may require that the alien should not be removed but kept in the country under proper restraints; and the nature and degree of these restraints, in cases where there has been no misbehaviour, may depend, in some measure, on the treatment which the hostile Government gives to citizens of the United States who may chance to be within its power.

The Chief Justice then held that the power of the President to order the removal and restraint of the alien enemy under section 1 of the act was not limited to taking action through proceedings in court (pp. 279, 280):

> It is never to be forgotten that the main object of the law is to provide for the safety of the country from enemies who are suffered to remain within it. In order to effect this safety,

it might be necessary to act on sudden emergencies. It is well known that the United States are exposed to great danger in a war with an enemy who commands the sea. Bounded by the Atlantic Ocean to a great extent, with numerous bays and navigable rivers, penetrating the very heart of the country, there is no knowing when, or where, the attack may be made. Without incurring the charge then of undue severity, prudence might require, that alien enemies residing in large cities, should be removed with more expedition than the formalities of law admit. The President, being best acquainted with the danger to be apprehended, is best able to judge of the emergency which might render such measures necessary. Accordingly, we find that the powers vested in him are expressed in the most comprehensive terms. He is to make any regulations which he may think necessary for the public safety, so far as concerns the treatment of alien enemies. It is certain, that these powers create a most extensive influence, which is subject to great abuse: but that was a matter for the consideration of those who made the law, and must have no weight with the judge who expounds it. The truth is, that, among the many evils of war, it is not the least, to a people who wish to preserve their freedom, that, from necessity, the hands of the executive power must be made strong, or the safety of the nation will be endangered.

The uses to which the second section of the act may be put and the necessity for some provision for

additional enforcement through the courts was then pointed out, as follows (pp. 280, 281):

> Many regulations may be made, which contain no order for the marshal to act, or which may direct him to proceed by way of complaint to the judges. If the regulation in question had simply been that alien enemies should retire to a place to be appointed by the marshal, any citizen might have complained of an alien enemy who declined to comply; and a judge might have made and enforced an order for his removal. There may be various regulations for the general conduct of alien enemies, without pointing out the mode of carrying them into effect; and in all such cases the courts may take cognizance of them. There may be regulations which barely order that certain things shall be done, or shall not be done, without defining the penalty in case of disobedience. In such cases the judges to whom complaint is made are vested with a considerable discretion. They may, according to the nature of the case, either direct the alien enemy to be removed out of the United States, or to give security for his good behavior, or to be imprisoned until the order of the President is complied with.

In their decision on the second *habeas corpus* petition the judges of the Supreme Court of Pennsylvania held as follows: Chief Justice Tilghman reterated his previous opinion. Judge Yeates held that the first section of the statute alone warranted confinement by the marshal for the purpose of renoval under the President's direction.

(p. 292:) I therefore consider the true construction of the act in question to be, that the marshal may legally enforce the directions of the President, communicated by the proper departments, without being under the necessity of recurring to the judicial authority for that purpose.

(P. 291:) When the vessel of the Commonwealth is in danger, partial evils must be submitted to, in order to guard against a general wreck. Aliens who have come among us before a declaration of war against their sovereign, and continue to reside among us after it, can not expect an exemption from such evils. Should our country be invaded, or our coasts blockaded, common prudence suggests that such persons should be removed from the scene of action. They may be safely detained, without subjecting them to unreasonable hardships, until it can be ascertained what course of conduct will be observed by the hostile country towards our own citizens resident there. The "law's delay" would ill suit such removals in cases of sudden emergency.

Judge Brackenridge held (pp. 295, 296):

I consider alien enemies, so apprehended, etc., as coming under the denomination of prisoners of state, not for any offense against the State, but for reasons of state; it being necessary for the safety of the State that they should be so apprehended, etc. Having not been taken in battle, I can not call them prisoners of war, for they are not liable to be exchanged. But what else can they be con-

> sidered, when apprehended, but as prisoners to some extent? By this act, entitled "An act respecting alien enemies," the President would seem to be constituted, as to this description of persons, with the power of a Roman dictator or consul, in extraordinary cases, when the Republic was in danger, that it sustain no damage: *ne quid detrimenti respublica capiat.* * * * Alien enemies remaining in our country after a declaration of war are to be treated according to the law of nations, and it has been so argued in this case. Shall then the judicial power constitute itself a judge between the Executive of the General Government and the nation with whom we are at war, and say whether the proceeding in the case of their subjects remaining in our country has been according to the law of nations?

Lockington v. Smith in the Federal Court.

In the Federal Court, a case of assault and battery—*Lockington* v. *Smith* (1817), 1 Peters C. C. 466—Mr. Justice Washington (then a member of the United States Supreme Court) *held* that the case had been "so fully discussed, and, to my mind, so satisfactorily decided," by Chief Justice Tilghman, that he would content himself with a brief expression of the reasons for his opinion, sustaining the legality of the marshal's action. He held that (p. 471):

> It seems perfectly clear that the power to remove was vested in the President, because, under certain circumstances, he might deem that measure most effectual to guard the public

> safety. But he might also cause the alien to be restrained or confined, if in his opinion the public good should forbid his removal.

As to the contention that the President could only enforce his regulation through the courts, he held (pp. 472–474):

> Such a construction would, in my opinion, be at variance with the spirit as well as with the letter of the law, the great object of which was to provide for the public safety by imposing such restraints upon alien enemies as the chief executive magistrate of the United States might think necessary, and of which his particular situation enabled him best to judge. It was certainly proper, and, in many cases, it might be highly beneficial to the public safety, to vest in the judiciary a power to enforce the ordinances of the President in every case which should be regularly brought before it. But to bring this power into action there must be a specific complaint against some particular individual, and a regular hearing of each case must be had. If no person will take upon himself the task of becoming an informer, at all times and under any circumstances an unpleasant one, is the public safety to be jeopardized, however imminent the President may know the danger to be? Certainly, this never could have been the intention of the Legislature. If only judicial interference can be resorted to, it is most obvious that the means are altogether inadequate to the end for which the law meant to provide. But how can a construction so narrow as that con-

tended for consist with the unlimited powers conferred on the President? If he could not direct the marshal to confine alien enemies who should refuse to retire to any place which might be designated, or who should declare their adherence to the enemy, and a disposition to support their interests, can it be said that he possesses the power to direct the conduct to be observed on the part of the United States towards alien enemies, and the manner and degree of their restraint, and to establish any other regulations he might think proper in the premises, for the public safety? If he is confined to regulations which require the interposition and aid of the judiciary to give them effect, then this restriction of his authority must be deduced by mere construction from expressions as unqualified as the Legislature could have used. I do not feel myself authorized to impose limits to the authority of the executive magistrate which Congress, in the exercise of its constitutional powers, has not seen fit to impose. Nothing, in short, can be more clear to my mind, from an attentive consideration of the act in all its parts, than that Congress intended to make the judiciary auxiliary to the executive in effecting the great objects of the law; and that each department was intended to act independently of the other, except that the former was to make the ordinances of the latter the rule of its decisions.

The case was argued by the noted Philadelphia lawyer, Charles J. Ingersoll, against Alexander J. Dallas.

It is to be especially noted that nowhere in either of these opinions is there a trace of a doubt as to the constitutionality of the statute, and this notwithstanding eminent counsel, accustomed to appear before the United States Supreme Court, appeared in both cases.

It further appears in Judge Brackenridge's opinion in the State case (p. 296) that Chief Justice Marshall, in another case (search for which has been made by the Government counsel in the case at bar without success), had sustained the President's power under this statute:

> A report has been read from a gazette of a decision of a court of the United States, Chief Justice Marshall and Judge Tucker composing that court—great names and in high station. This report, if correct, carries with it evidence that the executive authority was warranted in apprehending, etc., without the intervention of the judicial power.

In addition to the above, Mr. Justice Iredell (of the United States Supreme Court), when charging the jury in 1799 in *The Case of Fries,* in the Circuit Court for the District of Pennsylvania (9 Fed. Cases, No. 5126), stated his views upholding the constitutionality of both the alien-enemy act and the alien act; and he very carefully pointed out that Congress, in passing these laws, was not punishing criminal offenses, but was taking the necessary precautions to guard the country against war:

> (P. 831:) In most countries in Europe, I believe, an express passport is necessary for strangers. Where greater liberality is ob-

served, yet it is always understood that the Government may order away any alien whose stay is deemed incompatible with the safety of the country. Nothing is more common than to order away, on the eve of a war, all aliens or subjects of the nation with whom the war is to take place. Why is that done, but that it is deemed unsafe to retain in the country men whose prepossessions are naturally so strong in favour of the enemy that it may be apprehended they will either join in arms or do mischief by intrigue in his favour? * * *

(Pp. 831–832:) In cases like this it is ridiculous to talk of a crime; because perhaps the only crime that a man can then be charged with is his being born in another country and having a strong attachment to it. He is not punished for a crime that he has committed, but deprived of the power of committing one hereafter to which even a sense of patriotism may tempt a warm and misguided mind. * * *

(P. 832:) The opportunities during a war of making use of men of such a description are so numerous and so dangerous that no prudent nation would ever trust to the possible good behaviour of many of them.

Further, Mr. Justice Story cited the statute in *Brown* v. *United States* (1814), 8 Cranch, 110, evidently without any doubt as to its constitutionality. So did Kent, C. J., in *Clarke* v. *Morey* (1813), 10 Johnson, 69, 71.

We thus have four justices of the United States Supreme Court (Marshall, Washington, Iredell, and Story) and James Kent giving expressions of opinion on the statute without any intimation of doubt as to its constitutionality.

The only other cases which appear to have arisen under the Alien Enemy act were *Laverty* v. *Duplessis* (1813), 3 Martin 42, in the Supreme Court of the State of Louisiana, and *United States* v. *Laverty* (1812), 3 Martin (U. S.) 733, in the District Court for the District of Louisiana in which Laverty arrested as an alien enemy was discharged on habeas corpus on proof of United States citizenship.

III.

The power of Congress over the persons and property of alien enemies resident in the United States in time of war is plenary and uncontrolled. It is derived from the power of Congress under the Constitution to declare war and to make rules concerning captures on land and water, as well as from the powers residing in the sovereign Nation under the common law, and under the law of nations.

The war powers of the Constitution may be exercised to the extent that the safety of the Nation demands. As Madison said in The Federalist, No. 41, "It is in vain to oppose constitutional barriers to the impulse of self-preservation." Congress having power to declare war has, by necessary implication, conferred upon it the right to do such acts and to take such steps as in its judgment are proper and necessary to forward the war and to protect from enemies the people of the United States at home and in the field.

One of the measures of protection found by every nation to be most necessary in time of war is the guarding against internal enemies whose operations are more insiduous, and therefore, more dangerous to the common weal, in many cases, than are the active maneuvers of military forces. The very presence of enemy subjects in the land may constitute a potentiality of danger which must be guarded against, even before such persons become an active danger. Such persons may have been sent into the country for the very purpose of spreading sedition and of deceiving our own people by indirect propaganda and suggestion. An army of spies, incendiaries, and propagandists may be more dangerous than an army of soldiers.

The situation of the United States on April 6, 1917, when the President issued his proclamation for the regulation of alien enemies under Revised Statutes, 4067, clearly demanded such action. In his address to Congress of April 2, 1917, the President stated that the German Government "has filled our unsuspecting communities and even our offices of government with spies and set criminal intrigues everywhere afoot against our national unity of counsel, our peace within and without, our industries and our commerce. Indeed it is now evident that its spies were here even before the war began; and it is unhappily not a matter of conjecture but a fact proved in our courts of justice that the intrigues which have more than once come perilously near to disturbing the peace and dislocating the industries of the country

have been carried on at the instigation, with the support, and even under the personal direction of official agents of the Imperial Government accredited to the Government of the United States."

The report of the Committee on Foreign Affairs, made to the House of Representatives April 4, 1917, accompanying the resolution declaring the existence of a state of war (Report No. 1, 65th Cong., 1st sess.), contains a list of 21 instances of improper activities of German officials, agents, and sympathizers in the United States during the European war. (Copy of this portion of the report is hereto attached as Appendix B.)

The Report of the Attorney General of the United States for the year ending June 30, 1917, contains a long list of cases involving such German agents and sympathizers, in every one of which thus far tried convictions had been obtained. (See Appendix C of this brief.)

The German War Code (standard translation, p. 85) approves of such activities. "Bribery of enemy subjects, acceptance of offers of treachery, utilization of discontented elements of population, support of pretenders, and the like, are permissible; indeed, international law is in no way opposed to the exploitation of crimes of third parties."

Under such circumstances, it is very clear that not only had the Congress of the United States the power to put into operation such a statute as Revised Statutes, section 4067, but the existence and operation of such a statute was essential to the safety of the

Nation, and without it hostile enemy subjects inside of the United States could not be effectively suppressed.

The war powers of Congress were concisely stated over a hundred years ago by Mr. Gallatin in the House of Representatives (see Annals of Congress, 5th Cong., 2nd Sess., p. 1980, June 19, 1798): "Although Congress has not the power to remove alien friends, it can not be inferred that it had not the power to remove alien enemies—this last authority resulted from the power to make all laws necessary to carry into effect one of the specific powers given by the Constitution. Among these powers is that of declaring war, which includes that of making prisoners of war, and of making regulations with respect to alien enemies who are liable to be treated as prisoners of war. By virtue of that power, and in order to carry it into effect, Congress could dispose of the persons and property of alien enemies as it thinks fit, provided it be according to the laws of nations and to treaties."

The statute, in giving to the President the power to frame regulations for the restraint of alien enemies, clearly gave him the power to order the summary arrest or internment of those alien enemies whose presence at large he found to constitute a danger to the peace and safety of the United States. It would entirely neutralize the effect of the statute to impose upon the exercise of a power so necessary to the effective administration of the statute any restrictions such as right to a hearing before the courts or other official. Inasmuch as the mere presence of the

alien enemy in the country might well be found by the President to constitute a source of danger, it would be entirely futile to grant to such alien enemy a hearing to enable him to contravert the point as to whether his presence was or was not such source of danger. It is not only in the power of the President to act, but it is his duty to act, in such cases, frequently on suspicion, rather than on proven facts; for the purpose of the statute is largely preventive. War consists quite as much in preventing disaster from happening as in punishing or inflicting disaster upon the foe. This has been very ably set forth by the House of Lords in *Rex* v. *Halliday* (1917), (*ex parte Zadig*), L. R. (1917) A. C. 260. (See also L. R. (1916) 1 K. B. D., 738.) This case involved a much more extreme statute than section 4067, since it arose under a regulation which authorized the internment in time of war of a British citizen of hostile origin or associations. The Lord Chancellor said (p. 269):

> One of the most obvious means of taking precautions against dangers such as are enumerated is to impose some restriction on the freedom of movement of persons whom there may be any reason to suspect of being disposed to help the enemy. It is to this that regulation 14b is directed. The measure is not punitive but precautionary. It was strongly urged that no such restraint should be imposed except as the result of a judicial inquiry, and, indeed, counsel for the appellant went so far as to contend that no regulation could be made forbidding access to the seashore by suspected persons. It seems obvious

that no tribunal for investigating the question whether circumstances of suspicion exist warranting some restraint can be imagined less appropriate than a court of law. No crime is charged. The question is whether there is ground for suspicion that a particular person may be disposed to help the enemy.

Lord Atkinson said (pp. 271, 273, 275):

However precious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed by legal enactment, namely, national success in the war, or escape from national plunder or enslavement. * * *

One of the most effective ways of preventing a man from communicating with the enemy or doing things such as are mentioned in section 1, subsection 1 (a) and (c), of the statute is to imprison or intern him. In that as in almost every case where preventive justice is put in force some suffering and inconvenience may be caused to the suspected person. That is inevitable. But the suffering is, under this statute, inflicted for something much more important than his liberty or convenience, namely, for securing the public safety and defense of the realm. It must not be assumed that the powers conferred upon the Executive by this statute will be abused. * * *

And as preventive justice proceeds upon the principle that a person should be restrained from doing something which, if free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct

> from proof. If a person can be of hostile origin or association it is, I think, impossible to say that, if free and unfettered, it would not be reasonably probable that he would communicate with the enemy, or obtain information for the purposes mentioned in paragraph (a), or spread the false or other reports mentioned in paragraph (c), or do some of the other things mentioned in other paragraphs of that subsection. The public safety and the defense of the realm might be prejudicially affected if he did any of these things.

The power to arrest and intern alien enemies is a power inhering in the sovereignty of every nation, and the right to exclude such alien enemies from recourse to the courts, and especially from the right to release on *habeas corpus*, is inherently necessary for the protection of the sovereignty.

In England, such alien enemies interned have, during the present war, been held by the courts to be prisoners of war. See *The King* v. *Superintendent of Vine Street Police Station, 1915*, (*ex parte Liebmann*), 1 Law Reports, 1916, King's Bench Division, 268, in which Bailhache, J., said (p. 275):

> This war is not being carried on by naval and military forces only. Reports, rumours, intrigues play a large part. Methods of communication with the enemy have been entirely altered and largely used. I need only refer to wireless telegraphy, signaling by lights, and the employment on a scale hitherto unknown of carrier pigeons. Spying has become the hall-mark of German

"kultur." In these circumstances a German civilian in this country may be a danger in promoting unrest, suspicion, doubts of victory, in communicating intelligence, in assisting in the movements of submarines and Zeppelins—a far greater danger, indeed, than a German soldier or sailor.

I have come to the conclusion that a German subject resident in the United Kingdom, who in the opinion of the Executive Government is a person hostile to the welfare of this country, and is on that account interned, may properly be described as a prisoner of war, although not a combatant or a spy.
* * *

* * * These courts are specially charged to safeguard the liberty of the subject as one of their most sacred duties. The courts owe that duty not only to the subjects of His Majesty, but also to all persons within the realm who are under His Majesty's protection and entitled to resort to these courts to secure for them any rights which they may have, and this whether they are aliens or alien enemies. I think it right, therefore, to add that, deeply impressed as I am with the sanctity of the liberty of the subject, I can not forget that above the liberty of the subject is the safety of the realm, and I should be prepared to hold, as at present advised, that when the internment of an alien enemy is considered by the Executive Government charged with the protection of the realm, desirable in the interests of the safety of the realm, and the Government thereupon interns such alien enemy, the action of the Government in so

doing is not open to review by the courts of law by *habeas corpus*.

And Low, J., said (p. 277-8):

* * * In my opinion, to show that a man is a prisoner of war it is not necessary for him to have been an actual combatant. War at the present moment is not, as it was in olden times, confined to easily ascertained limits. The inventions and discoveries of recent years, and especially the existing means of communication, have so widened the fields of possible hostility that there is scarcely any limit on the earth, in the air, or in the waters which it is possible to put upon the exercise of acts of hostility, and real danger to the realm may therefore exist, although impossible of discovery, at distances far from where the actual clash of arms is taking place. In addition to this, methods of warfare or ancilliary to warfare have come into practice on the part of our foes which involve the honeycombing the realm with enemies, not only for the purpose of obtaining and dispatching information, but for purposes directly helpful to the carrying out of enterprises either actually warlike or eminently calculated to assist the successful prosecution of war. In a contest with people who consider that the acceptance of hospitality connotes no obligation and that no blow can be foul it would, I think, be idle to expect the executive to wait for proof of an overt act or for evidence of an evil intent. In my opinion this court is entitled to take judicial cognizance of these matters and, in a question so greatly

involving the security of the realm, to say that where the Crown, in the exercise of its undoubted right and duty to guard the safety of all, represents to this court that it has become necessary to restrain the liberty of an alien enemy within the kingdom, and treat him as a prisoner of war, he must be regarded for the purposes of a writ of *habeas corpus* as a prisoner of war.

IV.

The plenary power of the Congress of the United States to take the persons and property of resident alien enemies has been expressly upheld by the Supreme Court.

The plenary power of this Government to take the persons and property of enemies is expressly upheld by Marshall, C. J., in *Brown* v. *United States* (1814). 8 Cranch 110, pp. 122, 123:

> Respecting the power of Government no doubt is entertained. That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but can not impair the right itself. That remains undiminished, and when the sovereign authority shall chuse to bring it into operation, the judicial department must give effect to its will. * * * War is not an absolute confiscation of this property, but simply confers the right of confiscation.

At p. 125:

> * * * It may be considered as the opinion of all who have written on the *jus belli* that war gives the right to confiscate, but does not itself confiscate the property of the enemy; and their rules go to the exercise of this right.
>
> The Constitution of the United States was framed at a time when this rule, introduced by commerce in favor of moderation and humanity, was received throughout the civilized world. In expounding that Constitution, a construction ought not lightly to be admitted which would give to a declaration of war an effect in this country it does not possess elsewhere, and which would fetter that exercise of entire discretion respecting enemy property, which may enable the Government to apply to the enemy the rule that he applies to us.

And Marshall clearly considered that the statute now in question relating to alien enemies was in entire conformity to the law and to the Constitution, for he expressly cites this statute in support of his argument that it was not the declaration of war, but the act of Congress which brought into force the absolute and uncontrolled rights which a government possesses over the persons and property of enemies.

> War gives an equal right over persons and property: and if its declaration is not considered as prescribing a law respecting the person of an enemy found in our country, neither does it prescribe a law for his property.

> The act concerning alien enemies, which confers on the President very great discretionery powers respecting their persons, affords a strong implication that he did not possess those powers by virtue of the declaration of war (p. 126).

And Marshall further pointed out that the question of what should be done with enemy property (and hence, of course, with enemy persons) was a question proper for the consideration of the Legislature alone and not for the judiciary:

> When war breaks out, the question, what shall be done with enemy property in our country, is a question rather of policy than of law. The rule which we apply to the property of our enemy, will be applied by him to the property of our citizens. Like all other questions of policy, it is proper for the consideration of a department which can modify it at will; not for the consideration of a department which can pursue only the law as it is written. It is proper for the consideration of the Legislature, not of the Executive or judiciary (pp. 128, 129).

Hence, in the case at bar, Congress having acted and having placed in the hands of the President the power which Congress possessed "to take the persons" of alien enemies whom the President should deem a danger to the peace and safety of the United States to be at large, it is not proper for the judiciary to interfere with the form of exercise of congressional power which Congress ordained.

Rawle's View of the Constitution (1825), which was the earliest American book on constitutional law, says, page 87:

> Thus if war should break out between the United States and the country of which the alien resident among us is a citizen or subject, he becomes on general principles an alien enemy, and is liable to be sent out of the country at the pleasure of the General Government, or laid under reasonable restraints within it, and in these respects no State can interfere to protect him.

See also Kent's Commentaries (1829), Volume I, pages 56–59; Story's Commentaries on the Constitution (1835), section 1177 (see also note in Cooley's Edition); Dana's Wheaton's International Law (1866), section 304 and note; Halleck's International Law, page 315; Woolsey's International Law (1867), section 118.

Justices Chase and Wilson, in *Ware* v. *Hylton* (1796), 3 Dallas, 199, 226–228, 281, had admitted the unlimited right to confiscate the property of enemies during war as an incident of the powers and rights of war, Chase saying, "This right originates from self-preservation;" and even before the *Brown case*, Justice Story had stated in *Fairfax's Devisee* v. *Hunter's Lessee* (1813), 7 Cranch, 603, 620, that: "During the war the property of alien enemies is subject to confiscation *jure belli*." The unfettered power of Congress relative to enemies is also well shown in the series of cases arising under the various confiscation acts during the Civil War, the most

important of which are collected in Appendix D of this brief.

V.

The exercise by Congress of its war powers with reference to resident alien enemies is not so restricted by the due-process clause of the fifth amendment as to entitle an alien enemy to recourse to the courts in time of war.

As was said in *Murray's Lessee* v. *The Hoboken Land Company* (1855), 18 How. 272, 277, to ascertain what process enacted by Congress is due process "we must look to those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country." The rights which are guaranteed the resident of the United States by the fifth amendment may vary in time of war from those which are guaranteed to him in time of peace. As was said by the court in *Butler* v. *Perry* (1915), 240 U. S. 328, regarding the thirteenth amendment: "The great purpose in view was liberty under the protection of effective Government, not the destruction of the latter by depriving it of essential powers." Constitutional guarantees extended to the individual must, under certain circumstances, be subordinated to the "power of the public to guard itself against imminent danger." See *Jacobsen* v. *Massachusetts* (1905), 197 U. S. 11, 29; *Angelus* v. *Sullivan* (C. C. A., Second Circuit, 1917,

a case involving the constitutionality of the draft law).

All our liberties so carefully guarded by the first ten amendments to the Constitution are held subject to the all-embracing war power of Congress. Confiscation statutes passed during the Civil War were assailed in *Miller* v. *United States* (1870), 11 Wall. 268, as contrary to the fourth and fifth amendments. Touching the contention made in that behalf, the court said:

> But if the assumption of the plaintiff in error is not well made, if the statutes were not enacted under the municipal power of Congress to legislate for the punishment of crimes against the sovereignty of the United States, if, on the contrary, they are an exercise of the war powers of the Government, it is clear they are not affected by the restrictions imposed by the fifth and sixth amendments. This we understand to have been conceded in the argument.
>
> The question, therefore, is whether the action of Congress was a legitimate exercise of the war power. The Constitution confers upon Congress expressly power to declare war, grant letters of marque, and reprisal, and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted (p. 304, 305).

In *Stewart* v. *Kahn* (1870), 11 Wall. 493, the court again said:

> Congress is authorized to make all laws necessary and proper to carry into effect the granted powers. The measures to be taken in carrying on war and to suppress insurrection are not defined. The decision of all such questions rests wholly in the discretion of those to whom the substantial powers involved are confided by the Constitution.
>
> In the latter case the power is not limited to victories in the field and the dispersion of the insurgent forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress. This act falls within the latter category. The power to pass it is necessarily implied from the powers to make war and suppress insurrections. (pp. 506, 507).

So far as aliens are concerned, even in time of peace, the rights to which they are entitled under the due-process clause are very few. See *Turner* v. *Williams* (1904), 194 U. S. 279.

> Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive officers; that the deportation of an alien who is found to be here in violation of

> law is not a deprivation of liberty without due process of law, and that the provisions of the Constitution securing the right of trial by jury have no application (pp. 289, 290).

and *United States* v. *Ju Toy* (1905), 198 U. S. 253:

> If, for the purpose of argument, we assume that the Fifth Amendment applies to him and that to deny entrance to a citizen is to deprive him of liberty, we nevertheless are of opinion that with regard to him due process of law does not require a judicial trial. That is the result of the cases which we have cited and the almost necessary result of the power of Congress to pass exclusion laws. That the decision may be intrusted to an executive officer and that his decision is due process of law was affirmed and explained in *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 660, and in *Fong Yue Ting* v. *United States*, 149 U. S. 698, 713. * * * (p. 263)
>
> See also esp. *Wong Wing* v. *United States* (1896), 163 U. S. 228, 237.

In *The Chinese Exclusion Case* (*Chae Chan Ping* v. *United States*) (1889), 130 U. S. 581, p. 606, the court summed up the power of the Nation relative to aliens as follows, and it is highly important to note that the court stated that the exclusion of foreigners (and therefore, of course, their restraint in case exclusion should be impossible) would be rendered even more obvious and pressing in case of the existence of war:

> To preserve its independence, and give security against foreign aggression and en-

croachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us. The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determination, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers. If, therefore, the Government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects. *The existence of war would render the necessity of the proceeding only more obvious and pressing.*

See also Moore's Digest of International Law, volume 4, section 550.[1]

[1] In England the right to remove aliens in time of peace has been exercised by statute in 1793, in 1848, and in recent times (prior to the war). (See Taswell-Langmead's English Constitutional History, p. 667 note; Halsbury's Laws of England, Vol. I, sec. 705; *Musgrove* v. *Chun Teeong Toy* (1891, A. C. 272, cited in Michigan Law Review (1911), Vol. IX, p. 420.)

VI.

Due process of law, under the common law, gave to a resident alien enemy no rights which he could maintain in the courts. He had no rights or privileges, except such as arose from a license or other form of protection which the Sovereign chose to grant; his person or property could be seized and he had no redress.

ENGLISH CASES.

Blackstone (Vol. I, p. 372) said: "Alien enemies have no rights, no privileges, unless by the King's special favor, during the time of war."

Lord Halsbury's Laws of England (1907), Volume I, page 310, says:

> SEC. 682. An alien enemy had no rights at all at common law; he could be seized and imprisoned and could have no advantage of the law of England, nor obtain redress for any wrong done to him here. But it has for long been the custom to exonerate alien enemies who have been allowed to remain in this country *and are of good behavior* from the disabilities of enemies.

In Solicitors Journal (Aug. 8, 1914), volume 58, page 751, in an article on "The Legal Status of an Alien Enemy," it is said:

> Formerly an alien enemy lost his legal rights; if found here after a declaration of war, he could be seized and imprisoned, and could take out no legal process for redress against any wrong done to him in this country (per Lord Ellenborough in *Roberts* v. *Hardy* (1815), 3 M. & S., p. 536). But it is now

> generally regarded as sound law by international jurists that an alien enemy who remains in England *and behaves peaceably* is—in the absence of a general order for the expulsion of his compatriots—regarded as under the King's protection and accorded the same protection as one of the King's subjects (Hall's International Law, 5th ed., p. 395).

The whole subject is exhaustively treated in *Porter* v. *Freudenberg* (1915), 1 L. R. (1915) K. B. D. 857, per Lord Chief Justice Reading (pp. 865 *et seq.*):

> Alien enemies have no civil rights or privileges unless they are here under the protection and by permission of the Crown (Blackstone, 21st ed., Vol. I, ch. 10, p. 372). Indeed, under the ancient common law, "debts and goods found in this realm belonging to alien enemies belong to the King and may be seized by him." * * * Whether the right of the Sovereign to confiscate any of the alien enemies' goods or debts in this realm was ever exercised or not (see *Wolff* v. *Oxholm* (1817), 6 M. & S. 92, at p. 102, per Lord Ellenborough) there can be no doubt about the existence of the right (see *Attorney General* v. *Weeden* (1699), Parker, 267).

In *The King* v. *Superintendent of Vine Street Police Station* (*ex parte Liebmann*) (1915), 1 L. R. (1916) K. B. D. 268, 278, the general principle is stated by Low, J., that—

> At common law an alien enemy had no rights, and he could be seized and imprisoned

> and could have no advantage of the law of England,

citing *Sylvester's Case* (1702), 7 Mod. 150, which held that—

> If an alien enemy come into England without the Queen's protection, he shall be seized and imprisoned by the law of England, and he shall have no advantage of the law of England, nor for any wrong done to him here, but if he has a general or a special protection, it ought to come of his side in pleading.

That at common law, in England, an alien enemy had no rights to sue in the courts, see (1589) *Owen*, 45, *Cro. Eliz.* 142; *Co. Litt.* 129a; *Gilbert's Hist. Common Pleas*, 205; *Brandon* v. *Nesbit* (1794), 6 T. R. 23. A relaxation of the general rule was allowed in cases of alien enemies who were commorant in England by license or permission of the Crown, or who had been promised protection by the Crown, but in such cases the burden of proving such license, promise, or protection was on the alien. *McConnell* v. *Hector* (1802), 3 Bos. & P. 113; *Boulton* v. *Dobree* (1808), 2 Camp. 163; *Alciator* v. *Smith* (1812), 3 Camp. 245; *Alsenius* v. *Nygren* (1854), 4 El. & Bl. 217. But even in the latter cases there is always a limitation to the effect that the alien enemy only has such right in the court, while he is not actually hostile, while he is of good behavior, "not molesting the Government."

Thus, in *Wells* v. *Williams* (1697), 1 Lord Raymond, 282, 1 Salk. 46 (see case as explained in Law

Magazine and Review (1915), vol. 40, p. 215), it was said:

> Though the plaintiff came here since the war, yet if he has continued here by the King's leave and protection ever since, *without molesting the Government or being molested by it*, he may be allowed to sue, for that is consequent to his being in protection. (Italics ours.

See also *Daubigny* v. *Davallon* (1796), 2 Anstruther, 462, 467:

Alien enemies in England, who were there in a hostile capacity, either by reason of being prisoners of war, or by reason of not having the King's protection, had no rights in the courts at all.

Prisoners of war could not sue out *habeas corpus*.

> *Furly* v. *Newnham* (1780), 2 Douglas, 419.
>
> *Rex* v. *Schiever* (1759), 2 Burrow, 765. (In this case, England being at war only with France, the defendant was a Swede serving on a French privateer.)
>
> *The Casé of Three Spanish Sailors* (1779), 2 W. Blackstone, 1324. The court, by Gould, Blackstone, and Nares, Justices, held:
>
> These men upon their own showing are alien enemies and prisoners of war, and therefore not entitled to any of the privileges of Englishmen, much less to be set at liberty on a *habeas corpus*.
>
> See also *King* v. *Despardo* (1807), 1 Taunton, 25; *Maria* v. *Hall*, (1807) 1 Taunton, 32.

A prisoner of war could sue in the courts on a contract only in case he had not the "permanent

character of alien enemy"—*Sparenburgh* v. *Bannatyne* (1797), 1 Bos. & P. 163—in which case Chief Justice Eyre held that the prisoner being a German serving on a Dutch ship (England being at war with Holland, but not with Germany), could sue, inasmuch as he only had the "temporary character" of enemy. Eyre said (p. 170):

> I take the true ground upon which the plea of alien enemy has been allowed is, that a man, professing himself hostile to this country, and in a state of war with it, can not be heard if he sue for the benefit and protection of our laws in the courts of this country.

Both in England and in Canada during the present war, interned alien enemies have been held to be prisoners of war and have been denied writs of habeas corpus.

> *The King* v. *Superintendent of Vine Street Police Station; (ex parte Liebmann)* 14 R. 1916, K. B. D. 268.
>
> *Re Gusetu* (Superior Court Province of Quebec, District of Montreal, 1915), 24 Canadian Criminal Cases, 427, 429:
>
> During the existence of the war the courts should not be called upon to do anything which might in any way interfere with the actions of those specially charged with the safety of the country. Considerations of public welfare must override everything else. * * *
>
> On his own showing the petitioner is an alien enemy interned as a prisoner of war, because in the judgment of the authorities

> charged with the preservation of the security, defense, peace, order and welfare of Canada, it is not consistent with the public safety that he should be allowed at large. An alien enemy has no rights under the common law of England and the writ of *habeas corpus* is a prerogative writ by which the King has a right to inquire into the causes for which any of his subjects are deprived of their liberty. Halsbury's Laws of England, vol. 1, par. 682; vol. 10, par. 90.

AMERICAN CASES.

American courts have followed the English in their decisions on the rights of enemies resident in the United States to sue in the civil courts, and have allowed such rights only to an enemy resident here who had the protection and license of the Government and while he was *at large* and not "adhering to the enemy."

See *Clarke* v. *Morey* (1813), 10 Johnson's Rep. (N. Y.) 69, 72, per Kent, C. J.:

> In the case before us, we are to take it for granted (for the suit was commenced before the present war) that the plaintiff came to reside here before the war, and no letters of safe conduct were, therefore, requisite, nor any license from the President. The license is implied by 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 no such order is stated or averred. This is the evident construction of the act of Congress of the

> 6th July, 1798, entitled "An act respecting alien enemies." (Sess. 1, Cong. 5, ch. 73.) Until such order, the law grants permission to the alien to remain, though his sovereign be at war with us. A lawful residence 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.

See also *Bradwell* v. *Weeks* (1815), 13 Johnson 1, 4, per Yates, J.:

> In the case of *Clarke* v. *Morey* (10 *Johns. Rep.* 72) it is stated by the Supreme Court that the evident construction of the act of Congress of the 6th July, 1798, is, that, where an alien comes to reside here during peace, no letters of safe conduct are requisite, nor any license from the President; that the license is implied by the law and the usage of nations; that, if he came here even since the war, a license would be implied, and the protection to him would be continued, until the Executive should think proper to order him out of the United States.
>
> In this case, it does not appear that the intestate has ever, in any way, been molested by any order of Government, but has continued to reside here, by permission, as before stated, until his decease. I can see no reason why the rights he enjoyed, as to the destination of his personal property, if he had died during peace, should not (while he thus continued) be secured to him during war.

See also *Bagwell* v. *Babe* (1823), 1 Randolph 272, 276.

And Sewall, C. J., said, in *Hutchinson* v. *Brock* (1814), 11 Mass. 119, 122:

> An enemy to our sovereign shall not have the use or advantage of his laws, * * * On the other hand, the citizen or subject of a foreign country or sovereign, against whom we declare war, who is residing with us when war commences, and who is permitted afterwards to reside, *and be at large*, under the protection of our laws, is enabled by his residence, and by virtue of this protection, to maintain civil actions, notwithstanding the war, and any supposed duty of natural allegiance. (Italic ours.)

None of the cases, however, intimate that, when the protection of this Government is withdrawn from the alien enemy residing here, he has any rights at all in the courts or otherwise as against such action as the Government may see fit to take regarding him.

CONCLUSION.

It thus appears from both the English and American cases that due process at common law not only did not require court hearing or the privilege of habeas corpus on behalf of a resident alien enemy, but that when he was a prisoner or interned or hostile it did not even permit such hearing or writ on his behalf. In other words, an alien enemy had only such rights as the sovereign chose to grant.

That the power of Congress over the persons of alien enemies is plenary, has been expressly held by the Supreme Court of the United States. The

constitutionality of the statute in question is therefore clear. It is, in fact, so clear as not even to need the application of the doctrine so well set forth recently by Justice Meredith in the High Division of the Supreme Court of Ontario, in 1915, in *Re Beranek* (24 Canadian Criminal Cases, 252), in stating the attitude which courts of justice will maintain during war times:

> * * * It should be plain to everyone that in the stress and danger to the life of any nation in war, the courts should be exceeding careful not to hamper the action of those especially charged with the safety of the nation; careful, among other things, not to take up the time and attention of those who should be fighting the enemy in the field, in fighting lawsuits in the law courts over private rights. It is not a time when the prisoner is to have the benefit of the doubt; it is a time when, in all things great and small, the country must have every possible advantage; a time when it must be the general safety first in all things always; until the final victory is won; even though individuals may suffer meanwhile. Private wrongs can be righted then; while final defeat would not only prevent that but bring untold disasters to all. (p. 254.)

Respectfully submitted.

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JANUARY, 1918.

APPENDIX A.

REVISED STATUTES, SECTIONS 4067-4070.

SEC. 4067. Whenever there is a declared war between the United States and any foreign nation or Government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or Government, and the President makes public proclamation of the event, all natives, citizens, denizens or subjects of the hostile nation or Government, being males of the age of fourteen years and upward, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed, as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.

SEC. 4068. When an alien who becomes liable as an enemy, in the manner prescribed in the preceding section, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or Government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

SEC. 4069. After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized, and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison or otherwise secure such alien until the order which may be so made shall be performed.

SEC. 4070. When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be removed, it shall be the duty of the marshal of the district in which he shall be apprehended, to provide therefor, and to execute such order in person, or by his deputy, or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President, or of the court, judge, or justice ordering the same, as the case may be.

APPENDIX B.

(Extract from Report No. 1, House of Representatives, 65th Cong. 1st sess.)

IMPROPER ACTIVITIES OF GERMAN OFFICIALS IN THE UNITED STATES.

Since the beginning of the war German officials in the United States have engaged in many improper activities in violation of the laws of the United States and of their obligations as officials in a neutral country. Count von Bernstorff, the German ambassador, Capt. von Papen, military attaché of the embassy, Capt. Boy-Ed, naval attaché, as well as various consular officers and other officials, were involved in these activities, which were very widespread.

The following instances are chosen at random from the cases which have come to the knowledge of the Government:

I. By direct instructions received from the foreign office in Berlin the German Embassy in this country furnished funds and issued orders to the Indian independence committee of the Indian Nationalist Party in the United States. These instructions were usually conveyed to the committee by the military information bureau in New York (Von Igel) or by the German consulates in New York and San Francisco.

Dr. Chakrabarty, recently arrested in New York City, received, all in all, according to his own admission, some $60,000 from Von Igel. He claims that the greater portion of this money was used for defraying the expenses of the Indian revolutionary propaganda in this country, and, as he says, for educational purposes. While this is in itself true, it is not all that was done by the revolutionists. They have sent representatives to the Far East to stir up trouble in India and they have attempted to ship arms and ammunition to India. These expeditions have failed. The German Embassy also employed Ernest T. Euphrat to carry instructions and information between Berlin and Washington under an American passport.

II. Officers of interned German warships have violated their word of honor and escaped. In one instance the German consul at Richmond furnished the money to purchase a boat to enable six warrant officers of the steamer *Kronprinz Wilhelm* to escape after breaking their parole.

III. Under the supervision of Capt. von Papen and Wolf von Igel, Hans von Wedell, and, subsequently, Carl Ruroede, maintained a regular office for the procurement of fraudulent passports for German reservists. These operations were directed and financed in part by Capt. von Papen and Wolf von Igel. Indictments were returned, Carl Ruroede sentenced to the penitentiary, and a number of German officers fined. Von Wedell escaped and has apparently been drowned at sea. Von Wedell's operations were also known to high officials in Germany. When Von Wedell became suspicious that forgeries committed by him on a passport application had become known, he conferred with Capt. von Papen and obtained money from him wherewith to make his escape.

IV. James J. F. Archibald, under cover of an American passport and in the pay of the German Government through Ambassador Bernstorff, carried dispatches for Ambassador Dumba and otherwise engaged in unneutral activities.

V. Albert Sanders, Charles Wunnenberg, and others, German agents in this country, were engaged, among other activities, in sending spies to England equipped with American passports, for the purpose of securing military information. Several such men have been sent. Sanders and Wunnonberg have plead guilty to indictments brought against them in New York City, as has George Voux Bacon, one of the men sent abroad by them.

VI. American passports have been counterfeited and counterfeits found on German agents. Baron von Cupenberg, a German agent, when arrested abroad, bore a counterfeit of an American passport issued to Gustav C. Roeder; Irving Guy Ries received an American passport, went to Germany, where the police retained his passports for 24 hours. Later a German spy named Carl Paul Julius Hensel was arrested in London with a counterfeit of the Ries passport in his possession.

VII. Prominent officials of the Hamburg-American Line, who, under the direction of Capt. Boy-Ed, endeavored to provide German warships at sea with coal and other supplies in violation of the statutes of the United States, have been tried and convicted and sentenced to the penitentiary. Some 12 or more vessels were involved in this plan.

VIII. Under the direction of Capt. Boy-Ed and the German consulate at San Francisco, and in violation of our law, the steamships *Sacramento* and *Mazatlan* carried supplies from San Francisco to German war vessels. The *Olsen and Mahoney*, which was engaged in a similar enterprise, was detained. The money for these ventures was furnished by Capt. Boy-Ed. Indictments have been returned in connection with these matters against a large number of persons.

IX. Werner Horn, a lieutenant in the German Reserve, was furnished funds by Capt. Franz von Papen and sent with dynamite under orders to blow up the International Bridge at Vanceboro, Me. He was partially successful. He is now under indictment for the unlawful transportation of dynamite on passenger trains and is in jail awaiting trial following the dismissal of his appeal by the Supreme Court.

X. Capt. von Papen furnished funds to Albert Kaltschmidt, of Detroit, who is involved in a plot to blow up a factory at Walkerville, Canada, and the armory at Windsor, Canada.

XI. Robert Fay, Walter Scholtz, and Paul Daeche have been convicted and sentenced to the penitentiary and three others are under indictment for conspiracy to prepare bombs and attach them to allied ships leaving New York Harbor. Fay, who was the principal in this scheme, was a German soldier. He testified that he received finances from a German secret agent in Brussels, and told Von Papen of his plans, who advised him that his device was not practicable, but that he should go ahead with it, and if he could make it work he would consider it.

XII. Under the direction of Capt. von Papen and Wolf von Igel, Dr. Walter T. Scheele, Capt. von Kleist, Capt. Wolpert, of the Atlas Steamship Co., and Capt. Rode, of the Hamberg-American Line, manufactured incendiary bombs and placed them on board allied vessels. The shells in which the chemicals were placed were made on board the steamship *Frederick der Grosse*. Scheele was furnished $1,000 by Von Igel wherewith to become a fugitive from justice.

XIII. Capt. Franz Rintelen, a reserve officer in the German Navy, came to this country secretly for the pur-

pose of preventing the exportation of munitions of war to the allies and of getting to Germany needed supplies. He organized and financed Labor's National Peace Council in an effort to bring about an embargo on the shipment of munitions of war, tried to bring about strikes, etc.

XIV. Consul General Bopp, at San Francisco, Vice Consul General Von Schaick, Baron George Wilhelm von Brincken (an employee of the consulate), Charles C. Crowley, and Mrs. Margaret W. Cornell (secret agents of the German consulate at San Francisco) have been convicted of conspiracy to send agents into Canada to blow up railroad tunnels and bridges, and to wreck vessels sailing from Pacific coast ports with war material for Russia and Japan.

XV. Paul Koenig, head of the secret-service work of the Hamburg-American Line, by direction of his superior officers, largely augmented his organization, and under the direction of Von Papen, Boy-Ed, and Albert carried on secret work for the German Government. He secured and sent spies to Canada to gather information concerning the Welland Canal, the movements of Canadian troops to England, bribed an employee of a bank for information concerning shipments to the allies, sent spies to Europe on American passports to secure military information, and was involved with Capt. von Papen in plans to place bombs on ships of the allies leaving New York Harbor, etc. Von Papen, Boy-Ed, and Albert had frequent conferences with Koenig in his office, at theirs, and at outside places. Koenig and certain of his associates are under indictment.

XVI. Capt. von Papen, Capt. Hans Tauscher, Wolf von Igel, and a number of German reservists organized an expedition to go into Canada, destroy the Welland Canal, and endeavor to terrorize Canadians in order to delay the sending of troops from Canada to Europe. Indictments have been returned against these persons. Wolf von Igel furnished Fritzen, one of the conspirators in this case, money on which to flee from New York City. Fritzen is now in jail in New York City.

XVII. With money furnished by official German representatives in this country, a cargo of arms and ammunition was purchased and shipped on board the schooner *Annie Larsen*. Through the activities of German official represent-

atives in this country and other Germans a number of Indians were procured to form an expedition to go on the steamship *Maverick*, meet the *Annie Larsen*, take over her cargo, and endeavor to bring about a revolution in India. This plan involved the sending of a German officer to drill Indian recruits and the entire plan was managed and directed by Capt. von Papen, Capt. Hans Tauscher, and other official German representatives in this country.

XVIII. Gustav Stahl, a German reservist, made an affidavit which he admitted was false regarding the armament of the *Lusitania*, which affidavit was forwarded to the State Department by Ambassador Bernstorff. He plead guilty to an indictment charging perjury and was sentenced to the penitentiary. Koenig, herein mentioned, was active in securing this affidavit.

XIX. The German Embassy organized, directed, and financed the Hans Libeau Employment Agency, through which extended efforts were made to induce employees of manufacturers engaged in supplying various kinds of material to the allies to give up their positions in an effort to interfere with the output of such manufacturers. Von Papen indorsed this organization as a military measure, and it was hoped through its propaganda to cripple munition factories.

XX. The German Government has assisted financially a number of newspapers in this country in return for pro-German propaganda.

XXI. Many facts have been secured indicating that Germans have aided and encouraged financially and otherwise the activities of one or the other factions in Mexico, the purpose being to keep the United States occupied along its borders and to prevent the exportation of munitions of war to the allies; see, in this connection, the activities of Rintelen, Stallforth, Kopf, the German consul at Chihuahua, Krum-Hellen, Felix Somerfeld (Villa's representative at New York), Carl Heynen, Gustav Steinberg, and many others.

APPENDIX C.

(Extract from Report of the Attorney General for the year ending June 30, 1917, pp. 50-53.)

1. NEUTRALITY AND OTHER CRIMINAL CASES CONNECTED WITH THE EUROPEAN WAR.

Vigorous prosecution has been made of all cases involving violations of our neutrality and German criminal activities in this country in connection with the European war. In every such case tried, the Government has secured a conviction of at least some of the defendants. This should serve to discourage attempts of foreign sympathizers to use this country as a base for illegal operations designed to attack another country with which the United States is at peace.

Among the more important cases were the following:

1. *United States* v. *Bopp, Von Schack, Von Brincken, Crowley, Cornell, et al.*—In this case the German consul general at San Francisco and his assistants in the consulate were convicted of conspiracy to set on foot a military expedition from this country in violation of section 13 of the Federal Penal Code, and also of violating the Sherman antitrust law in connection with a plot to blow up bridges, tunnels, docks, and steamers carrying war supplies. They were sentenced in January, 1917, as follows: Bopp, Von Schack, Crowley, and Von Brincken, each to two years at McNeil's Island Penitentiary and to pay a fine of $10,000, and Mrs. Cornell one year and a day at the penitentiary, with concurrent sentence of one year for each in the county jail.

Bopp, Von Schack, and Von Brincken have taken an appeal to the Circuit Court of Appeals for the Ninth Circuit. They are now interned as alien enemies. Crowley and Mrs. Cornell are now serving their sentences.

2. *United States* v. *Rintelen, Lamar, Martin, et al.*—In this case the German agent, Franz Rintelen, and his American associates, Lamar and Martin, were convicted, in New York, of a conspiracy in violation of the Sherman antitrust

law in connection with a plot to tie up war munitions and promote strikes for the purpose. They were, in May, 1916, sentenced as follows: Rintelen, Lamar, and Martin each to serve one year's imprisonment in Mercer County prison, Trenton, N. J.

3. *United States* v. *Warner Horn.*—The defendant, who alleged himself to be a German reserve officer, after his appeal to the Supreme Court was dismissed, was tried at Boston, and convicted of transporting, in violation of law, dynamite on an interstate passenger train, in connection with the blowing up of the international bridge at Vanceboro, Me. He was sentenced in June, 1917, to 18 months' imprisonment at Atlanta Penitentiary and to pay a fine of $1,000.

4. *United States* v. *Kleist, Becker, Karbade, Praedel, Parades, and Schmidt.*—In this case these officers and members of the crews of German steamship companies were convicted in New York of conspiracy to destroy ships through the use of fire bombs secretly placed thereon. They were sentenced in May, 1917, as follows: Kleist and Schmidt to two years at Atlanta Penitentiary and to pay a fine of $5,000; Becker, Karbade, Praedel, and Parades, six months in jail and to pay a fine of $500.

Others indicted with them—Walter T. Scheele, a German chemist; Otto Wolport and Eno Bode, two pier superintendents of German steamship companies; Von Igel; Von Papen—have not yet been tried.

5. *United States* v. *Hans Tauscher, Alfred Fritzen, et al.*—In this case the defendants were indicted at New York for conspiracy to set on foot a military expedition in violation of section 13 of the Federal Penal Code, in connection with a plot to destroy the Welland Canal in Canada in September, 1914. Defendant Tauscher was tried in June, 1916, and was acquitted, the jury apparently believing Tauscher's story that he had been deceived by Capt. Von Papen as to the destined use of the dynamite which Tauscher helped in furnishing. Defendant Fritzen pleaded guilty and was sentenced in May, 1917, to 18 months at Atlanta Penitentiary and pay a fine of $1.

6. *United States* v. *Sander and Wunnenberg.*—In this case the defendants were tried in New York and convicted of a conspiracy to set on foot a military expedition or enterprise in violation of section 13 of the Federal Penal Code in connection with a plot to send spies to Europe in aid of the German cause. They were each sentenced in May, 1917, to two years at Atlanta Penitentiary and to pay a fine of $2,500.

7. *United States* v. *Hastings.*—This defendant was engaged in the same plot with Sander and Wunnenberg. He pleaded guilty at New York and was sentenced in May, 1917, to one year and one day at Atlanta Penitentiary.

8. *United States* v. *Jacobson, Gupta, Boehm, Wehde, et al.*—The defendants were indicted for conspiracy to violate section 13 of the Federal Penal Code and also for a violation of section 13 in connection with a plot to promote a Hindu insurrection. The case was tried at Chicago (after the end of the year for which this report is made), and the defendants were found guilty and sentenced in October, 1917, as follows: Jacobson, Wehde, and Boehm each to serve three years in the penitentiary and pay fines of $3,000 for violation of section 13, and each to serve two years in the penitentiary and pay fines of $10,000 for conspiracy to violate section 13, sentences to run concurrently; Gupta to serve 18 months in jail and pay a fine of $100 for violation of section 13 and to serve 18 months in jail and pay a fine of $100 for conspiracy to violate section 13, sentences to run concurrently.

9. *United States* v. *Theodor Fridland, Johann Olsen, and Ole Olsen.*—Defendant Fridland pleaded guilty, in New York, on November 6, 1916, to a charge of conspiracy to ship antimony and nickel out of this country without having filed manifests with the collector of customs, as provided by Revised Statutes, section 4200. He was sentenced to pay a fine of $500. The other two defendants were not apprehended.

10. *United States* v. *Joseph Newman, Oscar M. Newman, William Henn, Svenn du Rietz, and Hans R. Hanssen.*—Defendants were indicted in New York in April, 1917, for a conspiracy to defraud the United States in connection with the exportation of rubber without filing manifests as pro-

vided by Revised Statutes, section 4200. Henn pleaded guilty and was fined $25. Joseph Newman, Svenn du Rietz, and Hanssen were convicted in October, 1917, and sentenced to pay fines of $600, $300, and $20, respectively. Oscar Newman was found not guilty. Svenn du Rietz and Joseph Newman have sued out a writ of error to the circuit court of appeals.

11. *United States* v. *Blair and Addis.*—This case involved a violation of the law against foreign enlistments, in connection with recruiting for the English Army at San Francisco. The defendants, having secured in the circuit court of appeals a reversal of their conviction on a point of law, pleaded guilty in August, 1917, and were fined $1,000 each.

12. *United States* v. *John Lubken, George Sunkel, Jonas Edward Jensen, Heinrich Wattenburg, Johann Wilhelm Buse, Moritz von Thulen, August Neuse, and William Schwarting.*—The defendants, members of the crew of the German steamship *Liebenfels,* were tried at Charleston, S. C., and convicted of violating the act of March 3, 1899 (30 Stat., 1152), in connection with the sinking of the steamship in a navigable channel at Charleston on February 1, 1917. They were each sentenced, in March, 1917, to serve one year in the Atlanta Penitentiary and to pay a fine of $500.

13. *United States* v. *Johann Klattenhoff, Paul Wierse et al.*—Klattenhoff was captain of the *Liebenfels,* and Wierse a Charleston newspaper man. Indictments were brought against them in connection with the same crime committed by the crew of the *Liebenfels.* Klattenhoff pleaded guilty to one indictment and received a sentence of one year at the Atlanta Penitentiary and to pay a fine of $500, and in October, 1917, was convicted under another indictment and sentenced to serve an additional six months at Atlanta and to pay a fine of $100. Wierse was convicted, after a trial at Charleston, in October, 1917, and sentenced to serve two years in the Atlanta Penitentiary and to pay a fine of $1,000.

14. *United States* v. *Albert Kaltschmidt, Gustav Jacobson, Charles Respa et al.*—Defendants were indicted at Detroit, Mich., for conspiracy to violate section 13 of the Federal Penal Code, in connection with a military expedition against

Canada for the purpose of dynamiting munition factories. The case is set for trial at Detroit at an early date.[1]

15. *United States* v. *Hamburg-American Steamship Co., Bunz et al.*—The defendants were convicted in 1915 of a conspiracy to defraud the United States in connection with false manifests on ships sent from New York and elsewhere to coal the German fleet in 1914. They were sentenced in December, 1915, as follows: Bunz, Koetter, and Hachmeister to 18 months and Poppinghouse to one year and a day at Atlanta Penitentiary. An appeal is still pending before the Circuit Court of Appeals for the Second Circuit.

16. *United States* v. *Franz von Rintelen and Andrew D. Meloy.*—In this case the defendants are under indictment in New York for conspiracy to defraud the United States in connection with use by Rintelen, a German agent, of false passports in leaving this country. The case is pending.

17. *United States* v. *Franz Rintelen.*—Two further indictments are pending in New York for perjury and forgery in connection with defendant's false passport.

18. *United States* v. *Walter T. Scheele, Gustav Steinberg, and Wolf von Igel.*—The case is pending, owing to absence from the country of the defendants, who were indicted for conspiracy to defraud the United States in connection with the shipment of lubricating oil under the false designation of fertilizer.

19. *United States* v. *C. D. Bunker & Co., Swayne & Hoyt, J. L. Bley, Gustav Traub et al.*—The case is still pending in San Francisco, defendants being indicted for conspiracy to defraud the United States in connection with false manifests and shipments of coal to the German fleet from San Francisco on the steamship *Sacramento.*

20. *United States* v. *Bopp, Von Schack, Von Brincken, Ram Chandra, Bagwhan Singh, et al.*—This case is pending and will be tried in San Francisco in November, 1917. Over 100 defendants, largely Hindus, together with the German consul general, Bopp, were indicted for conspiracy to violate

[1] Since the date of the report defendants in this case have been convicted and sentenced as follows:

Albert Kaltschmidt to serve four years at Leavenworth Penitentiary and pay a fine of $2,000; Mrs. Ida Neef and Mrs. Carl Schmidt three and two years, respectively, in the Detroit House of Correction and a fine of $15,000; Fritz Neef and Carl Schmidt two years in Leavenworth Penitentiary and a fine of $10,000.

section 13 of the Federal Penal Code in connection with a military enterprise to promote a Hindu insurrection in India.

21. *United States* v. *Paul Koenig et al.*—The case is still pending in New York, defendant having been now interned as an alien enemy. The indictment was for violation of section 13 of the Federal Penal Code in connection with a plot to set on foot a military expedition in 1914, directed against the Welland Canal.

22. *United States* v. *Herbert Kienzle and Max Breitung.*—Defendants were indicted for conspiracy to place explosive bombs on ships, in connection with which Robert Fay and others were convicted on a separate trial. The case is still pending in New York, Kienzle having been now interned as an alien enemy.

In order to make the showing more complete, it may be stated that the following convictions were obtained prior to June 30, 1916, in cases arising out of the European war:

23. *United States* v. *Soloman et al.*—Defendants were sentenced to pay fines aggregating $2,100 for conspiracy to defraud in connection with false shipping manifests in an effort to get rubber to Germany.

24. *United States* v. *Thompson.*—Defendant was sentenced to three months in jail and to pay a fine of $500 for violating section 10 of the Penal Code in recruiting men for service in the British Army.

25. *United States* v. *Schiller.*—Defendant sentenced to life term in Atlanta Penitentiary for piracy.

26. *United States* v. *Fay, Scholtz, Daeche, et al.*—Defendants sentenced to eight, four, and three years, respectively, at Atlanta Penitentiary for conspiracy to place explosive bombs on rudders of vessels. Fay was an officer in the German Army.

27. *United States* v. *Jaeger et al.*—Defendants sentenced to pay fines aggregating $3,400 for conspiracy to defraud in connection with false shipping manifests in an effort to get rubber to Germany.

28. *United States* v. *Zelinka et al.*—Defendant sentenced to imprisonment for one week and to pay a fine of $200 for conspiracy to defraud in connection with a false passport.

29. *United States* v. *Hans Adam von Wedel, Ruroede, et al.*—Defendant Ruroede sentenced for three years at

Atlanta, and others were fined $300 each, for conspiracy to defraud in connection with false passports. Von Wedel, a German officer, became a fugitive and is supposed to have been drowned in a German submarine attack.

30. *United States* v. *Stegler et al.*—Defendants Madden and Cook sentenced to 10 months and Stegler to 60 days in jail for conspiracy to defraud in connection with false passports.

31. *United States* v. *Stahl.*—Defendant sentenced to 18 months at Atlanta for perjury in grand-jury proceedings relative to *Lusitania* affidavit.

APPENDIX D.

During the Civil War the following statutes were enacted for the confiscation or taking possession of enemy, hostile, and captured or abandoned property: The Confiscation Act of August 6, 1861, ch. 60 (12 Stat. 319); The Confiscation Act of July 17, 1862, ch. 195 (12 Stat. 589); The Abandoned and Captured Property Act of March 12, 1863, ch. 120 (12 Stat. 820). The principal cases decided under these acts are as follows:

Mrs. Alexander's Cotton (1864), 2 Wall. 404, 419, 420, 421.

Union Insurance Co. v. *United States* (1867), 6 Wall. 759, 763.

United States v. *Anderson* (1869), 9 Wall. 56, 66.

Pelham v. *Rose* (1869), 9 Wall. 103, 106, 107.

Bigelow v. *Forrest* (1869), 9 Wall. 339, 350.

United States v. *Padelford* (1869), 9 Wall. 531, 540.

Miller v. *United States* (1870), 11 Wall. 268.

Tyler v. *Defrees* (1870), 11 Wall. 331, 345–349.

United States v. *Klein* (1871), 13 Wall. 128, 136, 137.

United States, Lyon et al. v. *Huckabee* (1872), 16 Wall. 414, 434.

Planters' Bank v. *Union Bank* (1872), 16 Wall. 483, 495, 496.

Day v. *Micou* (1873), 18 Wall. 156, 162.

The Confiscation Cases (1873), 20 Wall. 92, 104.

Haycraft v. *United States* (1874), 22 Wall. 81, 93, 98.

Lamar, Executor, v. *Browne et al.* (1875), 92 U. S. 187, 195.

Alexandria v. *Fairfax* (1877), 95 U. S. 774, 778, 779.

Conrad v. *Waples* (1877), 96 U. S. 279, 284, 285.

Young v. *United States* (1877), 97 U. S. 39, 60, 61.

United States v. *Winchester* (1878), 99 U. S. 372.

Kirk v. *Lynd* (1882), 106 U. S. 315.

Phoenix Bank v. *Risley* (1884), 111 U. S. 125, 130.

Oakes v. *United States* (1899), 174 U. S. 778, 786–791.

United States v. *1,756 Shares of Capital Stock* (1865), 5 Blatchf. 231, 234, 236.

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