

1946

The Representational Function of the Alien Property Custodian

James L. Duncanson

Recommended Citation

James L. Duncanson, *The Representational Function of the Alien Property Custodian*, 15 Fordham L. Rev. 82 (1946).
Available at: <http://ir.lawnet.fordham.edu/flr/vol15/iss1/5>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

COMMENTS

THE REPRESENTATIONAL FUNCTION OF THE ALIEN PROPERTY CUSTODIAN*

JAMES L. DUNCANSON†

Introduction

The Office of the Alien Property Custodian during World War II has performed an important function which was not exercised by the Custodian during the first World War; namely, the representation of persons who, because of their presence in enemy countries, or enemy-occupied territory, were unable to defend themselves or to appoint someone to represent them in court or administrative actions or proceedings in the United States.

The declaration of war between the United States and the Axis powers in 1941¹ focused attention on the Trading With the Enemy Act of 1917, as amended,² with respect to property situated within the United States belonging to persons within enemy-occupied territory and enemy countries.

In order to implement the existing legislation to meet the problems created by our entry into World War II, the First War Powers Act of 1941 was enacted by Congress and approved by the President on December 18, 1941. Title III of this Act³ amended the first sentence of subdivision (b) of Section (5) of the Trading With the Enemy Act of 1917, as amended. This legislation conferred broad powers upon the President or any agency he might select to deal with the property or interests therein of nationals of a foreign country during time of war.⁴

* This article in the main relates to cases arising in the New York Field Office of the Alien Property Custodian.

† Member of the New York Bar. Assistant Chief, Estates and Trusts Section, New York Field Office of Alien Property Custodian.

1. Japan, 55 STAT. 795 (1941), 50 U. S. C. A. APP. (Supp. 1945); Germany, 55 STAT. 796 (1941), 50 U. S. C. A. APP. (Supp. 1945); Italy, 55 STAT. 797 (1941), 50 U. S. C. A. APP. (Supp. 1945); Bulgaria, 56 STAT. 307 (1942), 50 U. S. C. A. APP. (Supp. 1945); Hungary, 56 STAT. 307 (1942), 50 U. S. C. A. APP. (Supp. 1945); Rumania, 56 STAT. 307 (1942), 50 U. S. C. A. APP. (Supp. 1945).

2. 55 STAT. 839 (1941), 50 U. S. C. A. APP. § 5 (Supp. 1945).

3. *Ibid.*

4. "Title III contains three provisions: (1) Section 5 (b) p. 2305 of the Trading with the Enemy Act has been continued down to the present time. The existing system of foreign property control (commonly known as freezing control) is based on that subdivision as last amended on May 7, 1940. That subdivision of Section 5 as it is now in effect, however, does not give the broad powers to take, administer, control, use, liquidate, etc., such foreign-owned property that would be given by Section 301 of the bill. At present the Government exercises supervision over transactions in foreign property, either by prohibiting such transactions or by permitting them on condition and under license. It is, therefore, a system which can prevent transactions in foreign property prejudicial to the best interests of the United States, but it is not a system which can affirmatively compel the use and application of foreign property in those interests.

On March 11, 1942, the President of the United States by Executive Order No. 9095⁵ established the Office of Alien Property Custodian of the United States and on July 6, 1942, this Executive Order was amended by Executive Order No. 9193.⁶ Section "5" of this Executive Order⁷ authorized the Alien Property Custodian to issue regulations covering the service of process or notice upon any person within any designated enemy country or any occupied territory in connection with any court or administrative action or proceeding within the United States. The Custodian was further authorized by this Section to take measures in connection with representing any such person which, in his discretion, might be in the interest of the United States.

Procedure Set Up By the Alien Property Custodian

The Alien Property Custodian, acting pursuant to the authority of the Trading With the Enemy Act, as amended, and Executive Order No. 9193, thereafter issued General Orders 5,⁸ 6,⁹ and 20.¹⁰

"Section 301 remedies that situation by adding to the existing freezing control, in substance, the powers contained in the Trading with the Enemy Act with respect to alien property, extending those powers, and adding a flexibility of control which experience under the original act and the recent experience under freezing control have demonstrated to be advisable. The provisions of Section 301 would permit the establishment of a complete system of alien property treatment. It vests flexible powers in the President, operating through such agency or agencies as he might choose, to deal with the problems that surround alien property or its ownership or control in the manner deemed most effective in each particular case. In this respect the bill avoids the rigidity and inflexibility which characterized the Alien Property Custodian Law enacted during the last war." H. R. Com. Rep. No. 1507, 77th Cong., (1941) 6233.

5. 7 FED. REG. 1971 (1942).

6. 7 FED. REG. 5205 (1942).

7. "The Alien Property Custodian is authorized to issue appropriate regulations governing the service of process or notice upon any person within any designated enemy country or any enemy-occupied territory in connection with any court or administrative action or proceeding within the United States. The Alien Property Custodian also is authorized to take such other and further measures in connection with representing any such person in any such action or proceeding as in his judgment and discretion is or may be in the interest of the United States. If, as a result of any such action or proceeding, any such person obtains, or is determined to have, an interest in any property (including money judgments), such property, less an amount equal to the costs and expenses incurred by the Alien Property Custodian in such action or proceeding, shall be subject to the provisions of Executive Order No. 8389, as amended, *provided, however*, that this shall not be deemed to limit the powers of the Alien Property Custodian under section 2 of this Order; and *provided further*, that the Alien Property Custodian may vest an amount of such property equal to the costs and expenses incurred by the Alien Property Custodian in such action or proceeding."

8. 7 FED. REG. 6199 (1942).

9. *Ibid.*

10. 8 FED. REG. 1780 (1943).

General Order 5 requires all persons, acting under judicial supervision or in any court or administrative action or proceeding, to file a report relating to property or interest wherein it is reasonably believed that a person within an enemy country or enemy-occupied territory has an interest. The report relating thereto was required to be executed on a form known as APC-3.¹¹

General Order 6 relates to the service of process or notice upon persons within designated enemy countries and enemy-occupied territory. Certain states¹² amended their laws to provide for service of process or notice to conform with the provision of General Order 6. In New York, Rule 50 of the Rules of Civil Practice was also amended to provide for service upon the Custodian. It should be noted here that the issuance of General Order 6 was designed to aid the courts in meeting the various problems brought about by the declaration of war; however, its provisions are permissive and not mandatory. The Custodian through this order has provided for constructive service of process upon persons who, because of war-time conditions, are helpless to protect their interests in property under the jurisdiction of the various courts or administrative bodies in the United States. It has been said that where the Alien Property Custodian does not accept service of process on behalf of a person within an enemy country or in enemy-occupied territory or does not enter an appearance through a designated attorney on his behalf, the court has no jurisdiction of the proceeding and the interests of persons in the *res* cannot be adjudicated.¹³ The Custodian has not accepted service of process nor appeared in proceedings which do not involve the property rights of foreign nationals since these matters are entirely outside the sphere of his jurisdiction.¹⁴

General Order 20 states that certain designated persons such as an Executor, Administrator, etc. shall not pay, transfer or distribute any property for the benefit of any person within an enemy country, or enemy-occupied territory, unless the Alien Property Custodian has issued a written consent to the payment, transfer or distribution of said property. The courts have uniformly upheld this General Order of the Alien Property Custodian; even in the case of a payment to the City Treasurer pursuant to the provisions of Section 269 of the Surrogate's Court Act,¹⁵ such a consent has been held

11. See note 8 *supra*.

12. Indiana Acts 1943, C. 165; Maryland Laws 1943, C. 31; New Jersey Laws 1943, C. 32; New York Laws 1943, C. 407; Washington Laws 1943, C. 62.

13. *Farmers and Merchants National Bank of Los Angeles v. Superior Court of Los Angeles County*, 25 Cal. (2d) 842, 155 P. (2d) 823 (1945); *Cf. Dean v. Nelson*, 10 Wall. 158 (U. S. 1869).

14. With reference to the jurisdictional problems involved in such personal actions see, *Rosenblum v. Rosenblum*, 181 Misc. 78, 42 N. Y. S. (2d) 626 (Sup. Ct. 1943); *Fengler v. Fengler*, 181 Misc. 85, 43 N. Y. S. (2d) 885 (Sup. Ct. 1943).

15. This section provides in part as follows: "Where it shall appear that a legatee, distributee or beneficiary of a trust would not have the benefit or use or control of

to be necessary.¹⁶

Designation of Attorney by the Alien Property Custodian

The Alien Property Custodian, upon the receipt of process or notice relating to property wherein it appears that a person within enemy-occupied territory, or a designated enemy country, has or may have an interest, designates¹⁷ an attorney on his staff to appear on behalf of such person in the pending action or proceeding in accordance with Section "5" of Executive Order No. 9193.

In some cases where the Custodian has designated attorneys to appear on behalf of persons within an enemy country or in enemy-occupied territory, the courts have misconstrued the effect of such an appearance and in some of the reported decisions the courts have incorrectly stated that the Alien Property Custodian had appeared in the proceedings. A careful examination of the appearances filed of record will disclose, as Surrogate Henderson correctly stated in *Flaum's Estate*,¹⁸ that a designation of attorney by the Alien Property Custodian to appear for a person within an enemy country or enemy-occupied territory did not constitute an appearance by the Alien Property Custodian as an Executive Officer of the United States. The designated attorney files his designation and Notice of Appearance on behalf of the person within an enemy country or enemy-occupied territory and his appearance continues until the Alien Property Custodian determines that the designated attorney's services are no longer essential. It has been held, however, that the exercise of this representational function does not preclude an attorney's acting under a valid pre-war power of attorney from continuing to represent his client who is in enemy-occupied territory during the time of war unless such representation conflicts with the best interests of the United

the money or other property due him, or where other special circumstances make it appear desirable that such payment should be withheld, the decree may direct that such money or other property be paid into the surrogate's court for the benefit of such legatee, distributee, beneficiary of a trust or such person or persons who may thereafter appear to be entitled thereto. Such money or other property so paid into court shall be paid out only by the special order of the surrogate or pursuant to the judgment of a court of competent jurisdiction."

16. *Miller's Estate*, 181 Misc. 88, 45 N. Y. S. (2d) 485 (Surr. Ct. 1943); *Estate of Hans Gunnerson*, N. Y. L. J., Oct. 26, 1944, p. 1406, col. 2.

17. The usual form of such designation is: "Pursuant to the authority vested in the Alien Property Custodian by the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, you are hereby designated, appointed and empowered to appear for and represent _____ persons (a Person) within enemy-occupied territory (within a designated enemy country), in the matter of the estate of _____, deceased, a case now pending in the _____ Court, County of _____ State of _____ and to take such measures in connection with representing such persons (person) as may from time to time be determined by me or by my duly authorized representative."

18. 180 Misc. 1025, 42 N. Y. S. (2d) 539 (Surr. Ct. 1943).

States.¹⁹ It has also been held that the designation of an attorney by the Alien Property Custodian cannot be questioned.²⁰

This right to designate an attorney to represent persons within a designated enemy country was upheld by Surrogate Delehanty in *Matter of Cassola*,²¹ when attorneys representing the Swiss Consul General (as protecting power acting for the Government of Italy) sought to stay the settlement of an estate until the conclusion of war and until the distributees of the decedent might have counsel of their own choice. Surrogate Delehanty denied the motion of the attorneys for the Swiss Consul and upheld the representation by the designated attorney of the Alien Property Custodian. The attorneys designated by the Alien Property Custodian, wherever it was determined that communication with the defendant who was in an enemy-occupied territory, or a designated enemy-country, was necessary, have applied for and obtained stays of the actions until a reasonable time after the termination of hostilities.²² These decisions have been in conformity with the leading case of *Watts, Watts & Co. v. Unione Adriatica di Navigazione*.²³

The designating of attorneys by the Alien Property Custodian has aided the courts in jurisdictional matters and their active participation in the proceedings have permitted a proper adjudication of the rights of all interested parties. Mention of a few cases will serve to indicate how the attorney designated by the Alien Property Custodian has actively assisted in protecting the property rights of persons, in enemy or enemy-occupied countries, who have been unable to protect their interests. In *Cassola's Estate*,²⁴ the designated attorney on behalf of the distributees in Italy, opposed a claim by the Columbus Hospital of a gift *causa mortis*. It was claimed that currency, bonds, a commercial bank book and a statement of a brokerage account had been the subject of a gift by the decedent through the medium of the delivery of the keys to a box in his home. Surrogate Delehanty, while ruling

19. In the *Matter of Renard*, 179 Misc. 885, 39 N. Y. S. (2d) 968 (Surr. Ct. 1943); *In re Chapal's Estate*, 182 Misc. 402, 45 N. Y. S. (2d) 237 (Surr. Ct. 1943).

20. *In re Schultz's Estate*, 180 Misc. 1023, 1024, 42 N. Y. S. (2d) 537, 538 (Surr. Ct. 1943), the court said: "Perforce the Trading with the Enemy Act . . . and the Executive Orders the court and the parties must permit the appearance of the attorney designated to appear in the proceeding by the Alien Property Custodian. The rights which may enure to the benefit of the nation must be protected and the authority of the agency established by the Congress to intervene for the protection of the national rights is indubitable. In no event could the appearance of the attorney for the Alien Property Custodian be stricken out since on the face of the record there may be an interest in the assets of deceased on the part of persons residing in enemy-occupied territory." Also see *Petscheck v. American Enka Corp.*, 182 Misc. 503, 49 N. Y. S. (2d) 49 (Sup. Ct. 1944).

21. 183 Misc. 66, 47 N. Y. S. (2d) 90 (Surr. Ct. 1944).

22. *Metzger v. Credit Indus. d'Alsace et de Lorraine*, N. Y. L. J. Aug. 4, 1943, p. 239, col. 1; *Geismar v. Bellamy*, 180 Misc. 1018, 44 N. Y. S. (2d) 576 (Sup. Ct. 1943).

23. 248 U. S. 9 (1918).

24. 183 Misc. 366, 47 N. Y. S. (2d) 90 (Surr. Ct. 1944).

in favor of the Columbus Hospital on the currency and the bonds, upheld the contention by the designated attorney that a commercial bank book and a statement of a brokerage account could not be the subject of delivery by the mere transfer of the keys to the box containing these items. In *Grand's Estate*,²⁵ a claim was made by a guardian for an infant that an instrument executed by the absentee constituted a gift under the Laws of Latvia but the Surrogate decided in favor of the designated attorney of the Alien Property Custodian and the Special Guardian for the absentee and held that the instrument did not constitute any evidence of a gift by the absentee to the infant. In *Matter of Lachat*,²⁶ the late Surrogate Foley upheld the contention of the designated attorney who opposed the probate of the will upon the ground that the testatrix did not have testamentary capacity and that the instrument produced was executed as a result of undue influence. A similar contention by the designated attorney in the *Estate of Bertha May*²⁷ resulted in the denial of probate to a proposed last will and testament because of undue influence. In the *Matter of Andrevitch*,²⁸ Surrogate Howell upheld the contention of the designated attorney that the Socialist Labor Party, being an unincorporated association, was not the proper beneficiary of a bequest. In *Matter of Berkel*,²⁹ it was contended that a certain paragraph of the will constituted a trust. The attorney designated by the Alien Property Custodian opposed such interpretation and contended that the testatrix intended an outright legacy. The position of the designated attorney was upheld by Surrogate Savarese of Queens County. Surrogate Griffiths of Westchester County, in *Matter of George Antoni*,³⁰ ruled that a trust for the benefit of the widows and orphans of Neupfalz, Phinpfalz, Germany, was a valid charitable trust. This interpretation was advocated by the designated attorney and the New York Attorney General.

There are, of course, a great many cases which have been unreported in the State of New York in which the designated attorneys have performed services of inestimable value to persons in enemy-occupied territory and in enemy countries.³¹ The activities of the designated attorneys reflected in the New York decisions cited above have been carried out extensively throughout the forty-eight states.³²

25. — Misc. —, 43 N. Y. S. (2d) 803 (Surr. Ct. 1943).

26. 184 Misc. 486, 492, 52 N. Y. S. (2d) 445, 450 (Surr. Ct. 1944).

27. 184 Misc. 336, 55 N. Y. S. (2d) 402 (Surr. Ct. 1944).

28. — Misc. —, 57 N. Y. S. (2d) 86 (Surr. Ct. 1945).

29. 184 Misc. 711, 55 N. Y. S. (2d) 279 (Surr. Ct. 1944).

30. N. Y. L. J., March 4, 1946, p. 869, col. 3.

31. Additional cases involving the representational functions of the Alien Property Custodian's Office in this State will be found in the Estate of Anna Downer, N. Y. L. J., February 16, 1945, p. 637, col. 1; Estate of Louis Ravasi, N. Y. L. J., April 20, 1945, p. 1503, col. 2; *In re Morland's Estate*, 184 Misc. 439, 55 N. Y. S. (2d) 914 (Surr. Ct. 1944).

32. A few representative cases outside this jurisdiction in which the designated at-

Vesting Property

The Alien Property Custodian, in World War I, seized property by serving a demand upon the person holding property owned by the enemy. During World War II a different procedure has been followed by reason of Paragraph "2" of Executive Order No. 9193.³³ This provision gives to the Alien Property Custodian the power to vest property which is under judicial supervision.³⁴ This power is not limited but is all inclusive. This has recently been settled by the Supreme Court of the United States in *Markham v. Cabell*³⁵ in which the Court said: ". . . these authorizations carried power to issue regulations particularly in connection with the vesting of property as was done by the vesting orders in this case. The Alien Property Custodian in taking over the administration of the Trading with the Enemy Act is entitled to the full scope of its permanent provisions whether found in Section 5 (b) or Section 9 (a) or elsewhere."

If the Custodian deems it necessary in the national interest, he is authorized and empowered to take any action including the vesting of property. The Custodian, however, has not (under Section 2 (f) of Executive Order 9193) vested property of persons within enemy-occupied territory except in certain isolated cases where vesting was necessary in order to protect the property interests of such persons.³⁶

There are two types of vesting orders executed by the Alien Property Custodian:

1. an "all right, title and interest" vesting, and
2. a *res* vesting.

The first type, or an "all right, title and interest" vesting, transfers to the United States of America whatever title the designated national had in the property, while by the second type, or *res* vesting, the Custodian vests the

torneys' activities resulted in the ultimate award of property to the foreign national which, but for these services, would not have been distributed to him, are: *Allen v. Mazurowski*, 317 Mass. 218, 57 N. E. (2d) 544 (1944); *Estate of Christina Louise Petersen* (Sup. Ct. South Dakota 1946); *Estate of Nielsen*, — Mont. —, 165 P. (2d) 792 (1946).

33. 7 FED. REG. 5205 (1942).

34. "The Alien Property Custodian is authorized and empowered to take such action as he deems necessary in the national interest, including, but not limited to, the power to direct, manage, supervise, control or vest, with respect to: ". . . (f) any property of any nature whatsoever which is in the process of administration by any person acting under judicial supervision or which is in partition, libel, condemnation or other similar proceedings, and which is payable or deliverable to, or claimed by, a designated enemy country or national thereof."

35. 325 U. S. 847 (1945).

36. Under a bill which became public law on March 8, 1946 (Public Law 322, 79th Congress) a new Section 32 was added to the Trading with the Enemy Act. This new Section authorizes the President for such officer or agency as he may designate to restore seized property to persons who were not citizens of enemy countries and who were not hostile to the United States.

property itself. Justice Pecora, in *Stern v. Newton*,³⁷ wrote a very comprehensive opinion and analyzed the difference between an "all right, title and interest" vesting and a *res* vesting. The learned Justice upheld the right of the Alien Property Custodian to immediate possession of the property by reason of his *res* vesting order.

The Alien Property Custodian has set up an administrative process whereby a person, who is not a national of a designated enemy country, may file a claim with the Alien Property Custodian. Such a person by filing a form known as APC-1 with the Alien Property Custodian has an opportunity to have his claim determined administratively at a hearing before the Vested Property Claims Committee. The Committee, after such a hearing, may determine that the claim should be allowed. Its determinations are subject, however, to the ultimate decision of the Custodian and appeals can be taken to the Custodian from the Committee's decisions. Procedure before the Vested Property Claims Committee is governed by regulation.³⁸ The divesting of vested property is an act performed solely by the Custodian. A claimant may, in the first instance, without a hearing before the Vested Property Claims Committee or after a claim is rejected, bring an action in the District Court of the United States under Section 9 (a) of the Trading with the Enemy Act as amended,³⁹ demanding that the Alien Property Custodian return his property. In *Markham v. Cabell*,⁴⁰ the United States Supreme Court has upheld this right of the claimant to bring such an action.

Vesting Orders by the Alien Property Custodian have also been upheld by the state courts. The late Surrogate Foley, in *Matter of Reimer*,⁴¹ wrote:

"The gift to each of these legatees vested indefeasibly in her upon the death of the decedent, with payment only postponed under certain stated conditions. The Alien Property Custodian has succeeded to all the rights in the property to which the legatee was entitled 'as completely as if by conveyance, transfer or assignment'."⁴²

The same great jurist again gave full recognition to the Alien Property Custodian's vesting order in *Matter of Dieudonne*⁴³ where the court held that "the Alien Property Custodian acquired by virtue of the vesting order all the right, title and interest of the life tenant and the other alien beneficiaries in the trust."⁴⁴

37. — Misc. —, 39 N. Y. S. (2d) 593 (Sup. Ct. 1943).

38. 8 FED. REG. 16709 (1943).

39. 55 STAT. 839 (1941), 50 U. S. C. A. (Supp. 1945).

40. 325 U. S. 847 (1945).

41. — Misc. —, 44 N. Y. S. (2d) 282 (Surr. Ct. 1943).

42. Citing *Commercial Trust Co. of N. J. v. Miller*, 262 U. S. 51, 56 (1923).

43. — Misc. —, 53 N. Y. S. (2d) 56 (Surr. Ct. 1945).

44. Citing the Trading With the Enemy Act, §§ 5 and 7; First War Powers Act of 1941, § 616; Executive Order 9095, as amended; *Woodson v. Deutsche G. & S. S. V. Roessler*, 292 U. S. 449 (1934); *Central Union Trust Co. v. Garvan*, 254 U. S. 554 (1921); *Miller v. Lautenberg*, 239 N. Y. 132, 145 N. E. 907 (1924); *Matter of Bendit*,

In those cases where it is established that a person within enemy-occupied territory has an interest in property under judicial supervision and the Custodian has determined not to vest such property, attorneys and fiduciaries have been requested to provide in their decrees, judgments and orders that the property be placed in the City or County Treasurer's Office pursuant to Section 269 of the Surrogate's Court Act⁴⁵ until the further order of the court, or in a blocked account pursuant to Executive Order No. 8389, as amended. Section 269 of the Surrogate's Court Act has been very helpful in this respect and the late Surrogate Foley, in *Matter of Alexandroff*,⁴⁶ analyzes the reasons for its enactment by the New York legislature.

Discontinuance of Representation by the Alien Property Custodian of Persons Within Liberated Areas.

It has always been the aim of the Office of the Alien Property Custodian to restore the normal procedure of the courts wherever possible and to this end the Alien Property Custodian has issued three press releases with respect to his determination as to persons who were no longer "designated nationals" within the meaning of General Orders 5 and 6. The first release was issued on October 20, 1944 and the Alien Property Custodian determined that persons within the territory of the Union of Soviet Socialist Republics, as recognized by the United States on September 1, 1939, were no longer to be considered "designated nationals" because the territory described had been liberated from enemy forces, and because postal and other communications with persons within such territory had been restored. In this release it was emphasized that the attorneys designated by the Alien Property Custodian to represent such persons would continue to do so until the court recognized a duly authorized representative to appear for such persons.

The second press release was issued on March 1, 1945 and to the same effect as the October 20, 1944 release, the Custodian determined that persons within Belgium, Estonia, Finland, France, Latvia, Lithuania and Poland, not including the provinces of Pomorze and Katowice, were no longer to be considered as "designated nationals." The third press release was issued on June 7, 1945 and the Custodian determined that, effective on July 1, 1945, persons within Albania, Czechoslovakia, Denmark, Greece, Luxemburg, The Netherlands, Norway, Jugoslavia and the Provinces of Pomorze and Katowice of Poland, were no longer to be considered "designated nationals."

The Alien Property Custodian is presently accepting service on behalf of persons within Austria, Germany and Japan and citizens and subjects of Germany and Japan who are within Bulgaria, Hungary, Italy or Rumania. General Orders 5, 6 and 20 no longer apply to persons who are not citizens or subjects of Germany or Japan within Bulgaria, Hungary, Italy or Ru-

214 App. Div. 446, 212 N. Y. Supp. 526 (1st Dep't 1925); *Matter of Sielcken*, 167 Misc. 327, 3 N. Y. S. (2d) 793 (Surr. Ct. 1938); *Matter of Littman*, 176 Misc. 679, 28 N. Y. S. (2d) 458 (Surr. Ct. 1941).

45. See note 15 *supra*.

46. 183 Misc. 95, 47 N. Y. S. (2d) 334 (Surr. Ct. 1944).

mania in any court or administrative action or proceeding within the United States originally initiated or commenced after April 15, 1946.⁴⁷

Vesting of Costs and Expenses

The Alien Property Custodian has established a procedure whereby he may be reimbursed for his actual costs and expenses for representing persons within enemy-occupied territory where as a result of such representation these persons are determined to have an interest in property under judicial supervision. The Custodian's authority for this procedure is Paragraph "5" of Executive Order No. 9193.⁴⁸ The courts, as a whole, have recognized this authority and have signed decrees and orders directing the fiduciaries to pay to the Alien Property Custodian his costs and expenses upon the issuance and filing of his vesting order. The designated attorneys have filed affidavits with the various courts setting forth what costs and expenses the Alien Property Custodian has incurred in the action or proceeding in those matters where a vesting order has not issued. It must be realized that some delay is encountered because of the administrative procedure involved and it is not possible to have all vesting orders issued in time to have the number and the amount inserted in the decree or order.

Conclusion

The Office of the Alien Property Custodian has been a distinct aid to all the courts during World War II because of the procedure set up whereby designated attorneys represent persons within designated enemy countries and enemy-occupied territory. Jurisdictional defects have been remedied, the courts have functioned without too much delay, the interests of persons rendered helpless by war have been protected, excessive fees and costs have been held to a minimum and the cost to the United States taxpayer has been almost nil. And how has this been accomplished? There is a simple answer. The Office of the Alien Property Custodian from its beginning has sought and given cooperation to both court and attorney. The Bench and Bar, in turn, have given to the Alien Property Custodian's Office their fullest co-operation and understanding.

The statement⁴⁹ by the Deputy Alien Property Custodian, Francis J. McNamara, expresses this aim:

"It is the desire of the Alien Property Custodian to so administer his office as to aid in the orderly disposition of all pending court or administrative actions of proceedings involving the property or interests of persons in an enemy country, or enemy-occupied territory. If he has succeeded in this phase of his functions, it has been due to the patience and willingness of the bench and bar to aid and assist him."

47. 67 FED. REG. 3579-3581 (1946).

48. This paragraph provides in part as follows: ". . . and provided further, that the Alien Property Custodian may vest an amount of such property equal to the costs and expenses incurred by the Alien Property Custodian in such action or proceeding." 7 FED. REG. 5205, 5206 (1942).

49. Address to Amer. Bar Ass'n, Chicago, Ill. 1943.