

ALARMING THE FOREIGN INVESTOR

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THE amount of outside capital invested in Canada is not subject to exact measurement, and estimates vary a good deal. Probably five billion dollars would be a conservative figure. Of this, something less than two billion comes from Great Britain, while over three billion is invested from foreign countries. The United States is responsible for probably ninety-five per cent of the foreign investments, but other foreigners have invested in Canada sums which may be estimated from a hundred to a hundred and fifty millions.

Before the war, three-quarters of the outside capital playing its part in Canadian industry came from the United Kingdom. Since the Treaty of Peace that condition has radically changed, and to-day more than two-thirds comes from foreign countries. A very considerable body of Canadian industry would be hamstrung if the foreign capital now at work in this country were to be withdrawn. In these circumstances, there would appear to be a strong practical argument why we should not pursue a course of policy which tends to discourage foreigners from buying Canadian securities. Yet the plain fact is that, at the present time, the Canadian people, through their government, are pursuing just such a policy. It has long been an outstanding principle of international law that private property is exempt from confiscation in time of war. Yet at the present time the Canadian government is holding, under conditions which amount to confiscation, the private property of citizens of countries which in the Great War were our enemies. The course of action which we are pursuing is equivalent to a public notice that foreigners who in future invest money in the Dominion will be liable to have it seized without compensation should their governments later become involved in war with us.

The private property of our late enemies which has been sequestrated and is now being held by the Custodian of Enemy Property consists of three classes: (1) Debts owing by Canadian nationals to enemies; (2) Real property taken in Canada; (3)

shares and securities of Canadian companies. Official figures are not available, but the value of the property involved is estimated at from twenty to thirty million dollars. The seized property is subject to certain charges: (a) Debts payable by enemy subjects to Canadian creditors; (b) Amounts claimed by Canadian nationals for property sequestrated or otherwise dealt with under war measures in enemy countries; (c) The cost of administering the property.

This property was seized during the war, under emergency legislation, with the object of preventing its use for enemy purposes; but its present status depends upon the Treaty of Versailles. Trade between enemies was outlawed during the war, but debts owed at the outbreak of the war were recognized in the Treaty of Peace. Clearing offices were established for the payment of these debts as between our nationals and the nationals of enemy countries. Enemy property seized within the territory of any allied or associated Power was made primarily liable for property seized within an enemy country, for debts owing to allies by enemy nationals, and for the payment of claims for damages inflicted upon the property of an ally in enemy countries; and as regards a possible balance due to Germany, it was made secondarily liable for payment of reparations. It is true that the treaty contained a clause under which enemy countries undertook to compensate their nationals for property seized in an allied or associated state; and on this ground it has been said that there was no confiscation of enemy private property. But, as it has developed, enemy countries have not been able to compensate their nationals for the property thus seized, and the effect has been confiscation.

It may be argued that this confiscatory result is not the fault of ourselves and our allies, but of enemy governments. The weight of informed opinion would, however, seem to be that the failure of enemy governments to meet these losses on the part of their nationals has been due not to deliberate action on the part of the enemy governments, but to the heavy terms imposed upon them by the treaty, and to financial conditions at large. Be that as it may, the important question to be considered for the future is whether we wish to pursue a course of action which will discourage foreign investments in our country; and, from this standpoint, what we need to keep in mind is the attitude of the foreign investor whose thoughts will be centred upon the obvious facts that he has lost his property and that it is in our possession. The impression which will be made upon his mind is that a country which seizes private property in time of war, and does not compensate the owners of that property, is not a good country in which to invest.

A problem, then, which is before the Canadian people at the present time, is whether we should restore the seized property to our late enemies or compensate them for it. In approaching this problem we are not without examples from our allies and associates. A bill is now before the American Congress which is designed to provide for the return of enemy property seized in that country. A significant attendant circumstance is that the financiers of New York are at present promoting legislation at Albany to facilitate the listing of foreign securities on the New York stock exchange. Apparently the American government and American business men realize the importance of cultivating good financial relations with foreign nations. Another of our allies that has made provision for the return of enemy property is South Africa. In that country provision has been made for the issue to German owners of bonds in payment for the property seized, these bonds to bear interest at four per cent. Japan has liquidated German property. But she has, by successive orders, paid out to the German owners the full proceeds of liquidation up to ten thousand *yen*, and seventy per cent of the amount in excess of ten thousand *yen*; and she has paid, besides, a substantial portion of the interest which has accrued.

But perhaps the most striking of all settlements of this problem is that which has been reached between France and Germany. An agreement was signed by these two governments in December last. Under its terms France declares that, with certain exceptions covered by special agreements, the sums already credited or to be credited by the German clearing office are sufficient to cover the obligations of Germany under the debt and property sections of the Treaty of Versailles; and France therefore waives her right to payment of French debtors immediately by the German government or under the Dawes plan. "The whole of the property, rights and interests in France of German nationals", it is agreed, "shall only be used for the settlement of German liabilities for the benefit of French nationals through the enforcement of Part Ten", which means for the payment of debts to French citizens, and not for reparations. "As regards a possible balance in the German assets", it is finally declared, "the French government renounces the exercise of the right of retention conferred upon them by the Treaty of Versailles." Surely if these bitter enemies can reach an agreement on a matter of this kind, it should not be impossible for Canada to make terms with her late enemies on the same subject. In most, if not all, of the arrangements made so far, provision is included for the temporary retention of sufficient enemy property

to provide security for the payment of debts owed by enemy governments or by enemy nationals to nationals of the allied country making the agreement; and there is no reason why a similar provision should not be included in any settlement made by Canada.

It is advisable at this stage of the argument to clear up certain misapprehensions which appear to be widespread in relation to this subject. The idea has gained quite general credence that the property of enemy nationals seized by our government is available for payment of the claims of Canadians for war losses. These war losses have been investigated and, though no report has been published, are understood to run into considerable amounts. Frequently these claimants have entertained the idea that they had a legal right, under the reparation sections of the Treaty of Versailles, to the re-imbusement of their losses. This, however, is not the case either here or in the United Kingdom. Some years ago, Sir Austen Chamberlain stated quite expressly that "any payments that may be received from Germany are, therefore, the property of the nation, and no individual will have any claim in law for any sum which the British government may receive from Germany in respect of reparation." A similar statement was made last session in the Canadian House of Commons by the Hon. Ernest Lapointe. "The proceeds of the liquidation of German property in Canada", said the Minister of Justice, "cannot, however, be used to pay the war losses of individual Canadians, although this is the idea that many people seem to have." He added that no payment of these individual claims for war losses "can be made except from moneys voted by parliament for this specific purpose."

It is clear, therefore, that the return of the private property of our late enemies will work no injustice to those individuals who have claims for war losses against enemy governments. This obstacle, which might be a difficult one to overcome, need not, then, stand in the way of a solution of the problem. We can afford to approach it free of any fear of injustice to individual citizens, and to consider it simply from the standpoint of the welfare of the nation and of civilization.

Little has been said so far in this article about another phase of the question which is entitled to much respect. Indeed, if the abstract question had arisen before the war, the reasons now to be touched upon would probably have been considered conclusive. As far back as the Peace of the Pyrennes between France and Spain in 1659, the doctrine of the exemption of private property on land from confiscation made its appearance. "All goods and merchandise", said an Article in that treaty, "arrested in either of the

kingdoms upon the subjects of the said lords and kings at the time of the declaration of war, shall be uprightly and *bona fide* restored to the owners." The doctrine was far from universally accepted after that time, but it was incorporated in the treaty between the United States and Great Britain in 1794. In fact, in this case a broad principle was laid down which was to govern relations between these two countries in case of future wars. This principle was contained in Article 10, which read as follows:

Neither the debts due from individuals of one nation to individuals of the other, nor shares, nor monies which they may have in the public funds or in the public or private banks, shall ever in any event of war or national differences be sequestered or confiscated, it being unjust and impolitic that debts and engagements contracted and made by individuals, having confidence in each other and in their respective Governments, should ever be destroyed or impaired by national authority on account of national differences and discontents.

But, as John Bassett Moore remarks in a recent volume of essays on international law, "in time of war no principle is ever safe from attack"; and after the war of 1812 an attempt was made to confiscate British property in the United States. No confiscatory law was passed, but an effort was made to use the courts for this purpose. The attempt did not succeed, and in the judgment which released the British property the Chief Justice, John Marshall, declared that such a proceeding "would be deemed a harsh exercise of the rights of war", and that the "modern usage" could not be disregarded by a sovereign state "without obloquy."

It is apparent from what has already been written that the "modern usage" which John Marshall deemed so well established a hundred years ago is not yet entirely immune from attack. It is a reflection which should encourage modesty in us in our estimates of the progress of civilization, that a doctrine so well established a hundred years ago should have been so generally disregarded by the most advanced nations of to-day. The issue, indeed, from the present point of view is essentially one of the maintenance of civilization. "Of all the illusions a people can cherish", says John Bassett Moore in the volume already referred to, "the most extravagant and illogical is the supposition that along with the progressive degradation of its standards of conduct, there is to go a progressive increase in respect for law and morality. The world never will be rid of the problem of preserving its elementary virtues", he added. "Three hundred years ago

Grotius declared that, as he who violated the laws of his country for the sake of some present advantage to himself 'sapped the foundation of his own perpetual interest, and at the same time that of his posterity', so the people that 'violated the laws of nature and nations' broke down 'the bulwarks of its future happiness and tranquillity'."

The situation in which Canada finds herself to-day in regard to enemy property is one in which the dictates of civilization and of business point the same way. At this distance from the Peace, we ought to be able to approach this problem with minds clear of war-time bitterness, and to consider it with a view to the best interests of our own country and of civilization. For us in Canada the problem ought to be simpler than for some of our allies and associates. Whatever may be the case in other countries, there is no doubt that this Dominion is in need of foreign capital for its development. In such a case, it would seem obvious that only folly could dictate a course of action which would serve notice upon the world that foreign investments are not safe in Canada.