the raw material and colonial produce which enters into German manufacturing or German consumption, she must hereafter be dependent upon non-German sources. This is a heavy blow to her commercial prosperity, and likely to result in wide-reaching emigration to South American and other states. The future consequences of such constrained colonization form an interesting subject of speculation.

THEODORE S. WOOLSEY.

SOME OF THE FINANCIAL CLAUSES OF THE PEACE TREATY WITH GERMANY

Part IX of the Treaty of Peace concluded at Versailles June 28, 1919, embodies the so-called "Financial Clauses," embracing Articles 248 to 263, both inclusive. These clauses appear to deal primarily with four general sets of problems: first, the cost of reparation incurred by the Allied and Associated Powers; secondly, the effect of the cession of Germany territory upon the public debts of the grantor; thirdly, the nature and treatment of property passing by cession; and fourthly, the preservation and acquisition by Germany, and transfer to the Allied and Associated Powers, of moneys and certain other assets. Other important matters are also dealt with, such as, for example, the confirmation of the surrender of all material surrendered to those Powers pursuant to the terms of the armistice of November 11, 1918, and later armistice agreements, and the credits to be allowed therefrom (Article 250). There is also acknowledged (in Article 252) the right of each of those Powers to dispose of enemy assets and property within its jurisdiction at the date of the coming into force of the treaty. There is a declaration saving from prejudice, through the operation of previous provisions, mortgages of German public or private origin, in favor of the Allied and Associated Powers or their nationals, and perfected before the war (Article 253).

The principle that a first charge upon the assets and revenues of the German Empire and its constituent States is to be the cost of reparation and all other costs arising under the treaty or other agreements supplementary to it, is acknowledged and applied with care (Articles 248, 249, 251).

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Of much importance and great interest are the arrangements for the public debts pertaining to ceded territory.

According to Article 254, the Powers to which German territory is ceded shall, subject to qualifications made in Article 255, undertake to pay:

> 1. A portion of the debt of the German Empire as it stood on the 1st of August, 1914, calculated on the basis of the ratio between the average for the three financial years 1911, 1912, 1913, of such revenues of the ceded territory, and the average for the same years of such revenues of the whole German Empire as in the judgment of the Reparation Commission are best calculated to represent the relative ability of the respective territories to make payments.
>
> 2. A portion of the debt as it stood on the 1st of August, 1914, of the German State to which the ceded territory belonged, to be determined in accordance with the principle stated above.
>
> Such portions shall be determined by the Reparation Commission.

It is also provided that the method of discharging the obligation both in respect of capital and interest, so assumed, shall be fixed by the Reparation Commission, and that such method may take the form, *inter alia,* of the assumption by the Power to which the territory is ceded of Germany's liability for the German debt held by her nationals. Should, however, the method adopted involve any payments to the German Government, it is declared that such payments are to be transferred to the Reparation Commission on account of sums due for reparation so long as any balance in respect of such sums remains unpaid.

Article 255 embraces certain exceptions to the above provisions. Inasmuch as, in 1871, Germany refused to undertake any portion of the burden of the French debt, France is to be exempt from any payments in respect to Alsace-Lorraine. In the case of Poland, that portion of the debt which, in the opinion of the Reparation Commission, is attributable to the measures taken by the German and Prussian Governments "for the German colonization of Poland" is to be excluded from the apportionment. Again, in all ceded territories other than Alsace-Lorraine, that portion of the debt of the German Empire or German States which in the opinion of the Reparation Commission represents expenditures by the governments thereof upon government properties (respecting the transfer of which provision is made in Article 256), is to be excluded from the apportionment. The reason for this last exclusion is that such properties are to pass

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to the grantees and paid for by them to the Reparation Committee to the credit of the German Government on account of the sums due for reparation (Article 256).

The foregoing provisions of Articles 254 and 255 are based on the simple theory that the effect of a change of sovereignty by cession should be to cause the apportionment of the debts of the grantor. The application of this principle to the general as well as essentially local indebtedness of the grantor is due to the circumstance that the former may be normally deemed to be as closely and beneficially connected with the territory transferred as with that retained by the former sovereign.[1]

It would appear to be unjust to permit the transferee to gain the benefits accruing to the territory acquired from the use of borrowed funds unless the obligation to make repayment were undertaken. It is believed that the treaty, although not without precedent, marks a decided step forward, in its respect for a theory concerning which the publicists have heretofore oftentimes betrayed confusion of thought and yielded to unconvincing reasoning.

Obviously, the doctrine of apportionment suggests the limits of its own application. Whatever indebtedness is shown to be adverse to the welfare of the territory ceded, is not so related to it as to pass as a fiscal burden to the grantee. This limitation is closely observed in the foregoing articles of the treaty. It is well brought out in the exception as to indebtedness incurred for the German colonization of Poland. Doubtless the limitation excluding from apportionment German expenditures, both imperial and state, on governmental properties is of wide scope. But this does not signify, as has been observed, that the transferees, in cases where the limitation is made applicable, acquire those properties as a free gift or as the fruits of conquest. The case of Alsace-Lorraine, for reasons stated in the treaty, stands by itself.

According to Article 256, "all property and possessions" situated in German territory and belonging to the German Empire or to the German States, pass to the Powers to which German territory is ceded. The value of these acquisitions is to be fixed by the Reparation Commission, and, as has been noted, paid by the State acquiring the

[1] See opinion of Mr. Justice Holmes, in behalf of the Supreme Court of the United States in the case of Virginia *v.* West Virginia, 220 U. S. I, 29-30, this JOURNAL, Vol. 5, p. 523.

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territory to that commission for the credit of the German Government on account of the sums due for reparation. The property thus described is deemed to include all the property of the Crown, the Empire or the States, and the private property of the former German Emperor and other royal personages. In a word, the cession embraces every form of property, but subject to payment to be credited in diminution of the sums which, by way of reparation, Germany is obliged to undertake to pay. Such payments or credits are, however, excepted in the case of property in Alsace-Lorraine (by reason of the terms of the cession of that territory to Germany in 1871), and in that of property in land ceded to Belgium.

According to Article 257, all property and possessions belonging to the German Empire or the German States, within any of the former German territories, including colonies, protectorates or dependencies, administered by a mandatory (under the terms of the Covenant of the League of Nations), are to be transferred with the territories to the mandatory Power in its capacity as such, and no payment is to be made or credit given "to those governments" in consideration of the transfer. It should be observed that this article is outside of the scope of the limitations announced in Article 255 concerning the apportionment of the public debt, and is unrelated to that matter.

While the several cessions are rendered broadly comprehensive with respect to the amount and kinds of property to pass to the grantee, the duty imposed upon the latter to pay for what is transferred is apparently adjusted according to the equities of the particular grantee as against the grantor, and especially as derived from the former relation of the grantee to the property ceded. In measuring such equities, claims based upon prescription appear to be little heeded, save as they establish a title more respectable than one derived from conquest.

The extent to which the provisions for the apportionment of the public indebtedness of the grantor as it stood on August 1, 1914, may in fact serve to promote respect for international justice, will correspond precisely to the spirit and determination with which the Reparation Commission undertakes to fulfil its task. In view of the terms of the treaty as expressed in Articles 254 and 255, it is given to that body to develop a practice which is sound in theory, not unjust to grantee or grantor, and therefore, not conducive to inter-

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national controversy. All must hope that the commission, although not a judicial tribunal, will seize the opportunity so to exercise its vast discretionary powers as to convince enlightened sentiment in every land that the States victorious in the war remain steadfast to the fundamental principles of justice and for the sake of which they unsheathed the sword.

CHARLES CHENEY HYDE.

THE NEW ANGLO-PERSIAN AGREEMENT

On August 9, 1919, there were signed at Teheran two agreements between Great Britain and Persia which have been subjected to some severe criticism.[1]

As stated in the preamble, the main agreement was concluded "in virtue of the close ties of friendship which have existed between the two governments in the past, and in the conviction that it is in the essential and mutual interest of both in future that these ties shall be cemented, and that the progress and prosperity of Persia should be promoted to the utmost."

In the body of the first agreement the British Government gives the following undertakings:

(1) It "reiterates, in the most categorical manner, the undertakings which they have repeatedly given in the past to respect absolutely the independence and integrity of Persia."

(2) It promises to "supply, at the cost of the Persian Government, the services of whatever expert advisers may, after consultation between the two governments, be considered necessary for the several departments of the Persian administration. These advisers shall be engaged on contracts and endowed with adequate powers,

[1] This agreement was published September 11, 1919, as Senate Document No. 90, 66th Congress, 1st session. This document also includes a subsidiary agreement between the two governments relating to a loan of £2,000,000 at 7%; Article 5 of a contract between the Persian Government and the Imperial Bank of Persia, relating to the Persian Government 5% loan of £1,250,000 of May 8, 1911; and two notes by Sir P. Cox, the British Minister at Teheran, to His Highness Vossug-ed-Dowleh, the Persian Prime Minister.

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