DECISION

Case 1344

Re CHARLES VANDENDORPE

The claimant is a native of Belgium who was naturalized in Canada May 15, 1913. He claims for the loss of a castle in the village of Boesinghe near Ypres in Belgium and premises destroyed by enemy action at the beginning of the war.

The claim was submitted to the Belgian government in August, 1926, but was rejected on account of the claimant having lost his Belgian nationality.

The value of the property for taxation purposes at the time of its destruction was Frs. 14,000.00, and if claimant had been allowed his claim in the Belgian Court it would have been increased seven times for replacement value.

I would allow the claim at the value of the property at the time it was destroyed or the equivalent in Canadian money $2,702.00, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (9), and I find $2,702.00 fair compensation to claimant with interest as indicated.

JAMES FRIEL,
Commissioner.

December 2, 1927.

CLASS G

THE LATE COMMISSIONER PUGSLEY'S DECISIONS APPROVED BY COMMISSIONER FRIEL

INTERNMENT CLAIMS

Case No.	Claimant	Nature of Claim	Amount Claimed	Decision
			$ cts.	$ cts.
1345	Green, Willard	Interned in Africa	4,901 86	4,901 86
1346	Mayby, John J.	Captured on "Mount Temple" and interned	1,000 00	1,000 00
1347	Palmer, Thomas W.	Injury while interned prisoner	10,000 00	5,000 00
1348	Schippel, A. E.	" "	19,167 70	10,000 00
1349	Ketchum, J. Davidson	Interned prisoner	4,000 00	Dismissed—withdrawn.
1350	Mikaeloff, Anastas	"	778 21	Dismissed.
1351	Ferguson, Wm.	Captured on "Mount Temple" and interned	105,000 00	Dismissed—withdrawn

COMMISSIONER FRIEL'S DECISIONS

1352	Clelland, Mrs. Mary J.	Soldier husband died of wounds whilst prisoner of war.	Not stated.	Dismissed.
1353	Jones, Mrs. Elis. F.	Nurse detained in Belgium until Oct. 1914. Loss of salary.	1,000 00	"
1354	Miller, Hugh	Interned prisoner Aug. 1914-Nov. 1918	14,600 00	"
1355	Macleod, David G. A.	Military prisoner of war. Damage to health, etc.	9,300 00	"
1356	McCracken, E. C. J.	Military prisoner of war and loss of effects	335 21	"
1357	Smith, L. Arden	Prisoner of war and loss of effects	222 50	"
1358	Tucker, Chas.	Maltreatment as prisoner of war	5,000 00	"
1359	Taylor, Hubert L.	"Electo"—Detained at Hamburg and interned.	4,498 90	"
1360	Waters, Francis	Maltreatment as prisoner of war	5,000 00	"
1361	Moncur, Daniel	Son was shot whilst prisoner of war	20,000 00	"
1362	Lefebvre, Louis V.	Maltreatment as prisoner of war	13,200 00	"

INTERNMENT CLAIMS—*Con.*

Case No.	Claimant	Nature of Claim	Amount Claimed	Decision
			$ cts.	$ cts.
1363	Adams, Geo. James	Maltreatment as Prisoner of War	6,680 00	2,000 00
1364	Boyce, Henry B. T.	Prisoner of war and loss of effects	32 00	32 00
1365	Auger, Moise	Captured on "Mount Temple" and interned	960 00	1,500 00
1366	Barnden, S. W.	Maltreatment as prisoner of war	5,000 00	3,000 00
1367	Boulton, Arthur	" "	82,500 00	15,000 00
1368	Bryce, Frederick	Interned as prisoner on the Hulks at Hamburg.	2,500 00	1,625 00
1369	Cranston, Samuel	Maltreatment as prisoner of war	10,000 00	4,000 00
1370	Craigen, Geo.	Personal injury and personal effects on "Minnetonka". Jan. 30/18.	8,922 40	1,600 00
1371	Duncan, David	Arrested at Hamburg, Aug. 1914	650 00	150 00
1372	Desilets, Lucien	Captured on "Mount Temple" and interned	2,095 00	1,095 00
1373	Emery, Jno. T.	Loss of furniture and effects	500 00	1,750 00
1374	Eagles, Jas. C.	Captured on "Drummuir" and interned	3,476 34	2,415 78
1375	Flint, Wm. G.	Interned Feb. 1915 till Nov. 1918	12,000 00	2,250 00
1376	Gelin, Joseph	Interned Nov. 1914 till Oct. 1917, personal effects, personal injury, etc.	39,375 00	10,375 00
1377	Gelin, Moses	Interned Feb. 1915 till March 1918. Personal effects, personal injury, etc.	35,406 00	5,406 00
1378	Luck, E. L.	Interned Aug. 1914 till March 1915. Personal effects, etc.	2,800 00	300 00
1379	Myhre, Gjert	Schooner "Triumph" captured Aug. 1918	Not stated	1,000 00
1380	Purdy, Geo. N.	(Deceased) Master "Pandosia", Hamburg, Aug. 2/14.	17,721 50	2,125 00
1381	Ross, Jas.	Cattleman "Mount Temple", Dec. 6/16. Personal effects, etc.	2,095 00	1,595 00
1382	Westgate, Rev. T. B. R.	Interned German East Africa, 1914-17	35,125 00	2,182 45
1383	Whittaker, Frederick	Maltreatment as prisoner of war, April 24/15.	2,500 00	2,500 00
1384	Purdy, Ella and Mary	Sisters of Capt. Purdy died Nov. 1923	9,000 00	3,000 00
1385	Patterson, Samuel S.	1st Officer "Pandosia", Aug. 1/14	38,910 00	2,300 00
1386	Roop, John E.	Master "Frankdale", Aug. 1/14	35,280 00	3,800 00
1387	Boisvert, Chas.	Horseman "Mount Temple," Dec. 6/16	2,400 00	1,050 00
1388	Morgan, John S.	" " "	3,000 00	1,500 00
1389	Sweeney, Bernard	" " "	2,400 00	1,050 00
1390	Douglas, Alexander	Maltreatment as prisoner of war	Not stated	6,000 00
1391	McIlwain, Harold	Personal injury, expenses, etc.	18,875 00	4,000 00
1392	Armand, Jean T.	Interned Aug. 1914-Aug. , 1915, personal injury, expenses, etc.	106,493 00	10,000 00
1393	Copp, Clark Co. (Hugh F. Young).	Interned Aug., 1914-Nov., 1918	8,628 00	2,200 00
1394	Lochead, Dr. A. C.	Interned Aug., 1914-Nov., 1918, Personal injury.	12,500 00	3,700 00
1395	McMillan, Ernest C.	Interned Jan., 1915-Nov. ,1918	3,000 00	1,100 00
1396	Ruckenstein, A.	Personal injury, loss of earnings, etc.	34,164 75	5,542 50
1397	Sprague, Rufus G.	"Pontiac", April, 1917-Dec., 1918	4,594 70	1,841 74
1398	Elliott, Joseph	Horseman, "Mount Temple"	2,000 00	1,500 00
1399	Stewart, M. McK.	Maltreatment as prisoner of war	3,000 00	3,000 00
1400	Hessin, F. W.	Interned Feb., 1915-Aug., 1918. Personal injury and personal effects.	28,000 00	2,500 00
1401	Chambers, Arthur J.	Interned Nov., 1914 to Armistice. Personal injury and personal effects.	78,497 60	2,925 00
1402	Scherman, David	Interned April, 1916, to Aug., 1916. Personal injury and personal effects.	1,600 00	500 00
1403	Reiter, Harry	Ruhleben till Jan., 1917	2,000 00	1,200 00
1404	Rolff, Geo. W.	Ruhleben, Feb., 1915-May, 1917	10,000 00	1,500 00
1405	Allen, Chas. O.	"Strathcona", sunk April 4/17. Personal effects, etc.	3,076 74	2,584 08
1406	Morrison, John	Interned in Austria Aug., 1914-Nov. 1918. Personal injury, personal effects, cash, etc.	21,000 00	4,623 00
1407	Himbury, R. W. H.	Apprentice, "Clan Mactavish", Jan. 16/16. Interned and personal effects.	500 00	500 00
1408	Jackson, Chas. H.	Seaman, "Trevorian", Nov., 1914, interned, personal injury and earnings.	7,659 26	1,500 00
1409	Reynolds, John V.	Seaman "Voltaire". Interned Dec., 1916. Personal injury, personal effects and expenses.	8,805 00	1,850 00
1410	Solloway, Harry W.	Interned in Germany Sept., 1914 till March, 1918.	600 00	1,835 00

COMMISSIONER FRIEL'S DECISIONS

INTERNMENT CLAIMS—*Conc.*

Case No.	Claimant	Nature of Claim	Amount claimed	Decision
			$ cts.	$ cts.
1411	Shortis, Jno.	Captured on "Mount Temple" and interned Dec., 1916. Personal effects, etc.	2,400 00	1,500 00
1412	Bell, Thos.	Cook SS. "Vienna", interned July, 1914-Nov. 1918. Personal injury, personal effects, etc.	7,457 27	1,800 00
1413	Chapman, Oswald W.	Interned Aug., 1914-Nov., 1918. Personal injury and earnings.	7,500 00	1,500 00
1414	Carr, J. H.	Prisoner of war. No particulars. Cannot locate.	Not stated	No action
1415	Ludgate, J. D.	Prisoner of war. Money taken.	44 77	" Paid by Department National Defence.
1416	Allice, Auguste	Interned four years. No Canadian domicile	Not stated	No action
1417	Campbell, Philip	Fireman "Georgie", captured Dec. 1916., No proof offered.	189 62	"
1418	Beeton, Mrs. Annie	Son died of pneumonia at Metz, Dec. 2/19, whilst prisoner of war. (Cannot locate claimant).	Not stated	"

DECISIONS SINCE APRIL 5, 1927

1419	Fishman Hyman	Interned 1914-1918. Personal injury	10,000 00	6,125 00
1420	Logan William	Captured on "Mount Temple" and interned Dec., 1916.	2,000 00	1,200 00
1421	Beland, Hon. H. S.	Interned. Loss of revenue and injury to health	32,000 00	16,700 00
			$ 996,823 33	$ 184,729 41

DECISION

Case 1345

Re WILLARD GREEN, CLAIMANT

At a sittings held at Toronto on 10th May, 1924, Mr. Green appeared before me and stated that he wished to make a claim for reparation.

It appears from the evidence that the claimant was born in Canada, but during the year 1914 he was employed in German East Africa in connection with a mission at a place called Shamagasa. On the 27th November, 1914, he was called to a place named Muanza to make a statement as to his nationality. In January, 1915, he was taken to Tabora, the German headquarters. Here he was kept until early in May, when he was sent to Kilieuatiudi where he was detained as a prisoner of war for 10 months. His entire term of imprisonment was for 25 months and 23 days; he having been released in September, 1916, by British and Belgian officers. The only excuse given for his being taken prisoner was that he was a British subject.

In his evidence he relates his experiences as a prisoner and says that he was obliged to work as a blacksmith and do labour in the fields for which he received no pay. He became ill because of the poor food and the fact that it was badly cooked and not properly cleansed. As a result of this his health has become injured and he has lost about 15 pounds in weight, which he has never regained. He finds that his nerves are affected and he is unable to go up on high buildings which is a great handicap to him, he being a carpenter by trade.

His claim is for one pound a day for each working day he was imprisoned, and this would equal, 566 days, at £1 a day, the sum of $2,776.86.

He also stated that he lost his carpenter's tools and other belongings, which he values at $125.00, and in addition claims the sum of $2,000.00 on account of injury to his health.

At the time of his appearance before me the claimant stated that he was 44 years of age and that he had received gratuities from East Africa amounting to $75.00 and from Canada to the amount of $205.00.

He is positive that his tools were stolen by the Germans because the natives were exceptionally honest.

Upon a review of the evidence I find that the claimant was taken prisoner by the German authorities and forced to work without pay and suffered considerable injury to health as a result of his treatment while a prisoner. I therefore think that his claim is justified and that the amount claimed for the work performed by him at the rate of £1 for each working day is reasonable and allow it at the sum of $2,776.86. I also allow for the loss of his tools the sum of $125.00, for the injury to his health I allow the amount claimed, being $2,000. This makes a total of $4,901.86 which I allow and to which I think should be added interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Peace (January 10, 1920) to the date of settlement.

WM. PUGSLEY,
Commissioner.

Memorandum.

Re CLAIM OF WILLARD GREEN

I do not agree with this judgment. With respect to personal injury there is no medical record. With reference to payments for forced labour, prisoners in Germany were allowed $20.00 per week by British Reparation Claims Department and for internment about $300.00 a year. (See title "Solatium" in green book.)

JAMES FRIEL,
Commissioner.

Ottawa, October 1, 1926.

DECISION

Case 1346

Re JOHN J. MAYBY

This is a claim for loss of wages on account of internment as a result of the capture of the ss. *Mount Temple* by the Germans on December 6, 1916. The amount of the claim is $1,000.

At a sittings held before me at Toronto on May 7, 1924, the claimant appeared and testified that he was born in England but has resided in Canada for some twenty-five years. He was employed on the *Mount Temple* as a cattle man for the sum of $20.00 on the trip to England and at the rate of $1.00 per day for the return trip. Prior to this he was employed in Toronto with the Swift Canadian Company earning about $12.00 per week. He was taken prisoner on December 6, 1916, and landed in Germany on January 1, 1917. He was interned at Brandenburg Camp until November 23, 1918, a period of about one year and eleven months. He stated that the Germans paid him 6 marks a week for work he was compelled to do in a large powder factory. He complained of a slight throat or chest trouble as a result of his confinement in Germany. After his return to Canada he went to work for the Harris Abattoir Company, where

he first received 56 cents per hour but was later reduced to 50 cents per hour on an 8-hour day. During the first 6 months of his internment he stated that he scarcely received anything to eat. His claim for $1,000 is based upon what he might reasonably have expected to have earned had he not been detained for the period of one year and eleven months.

I think this claim is very reasonable and that the claimant could have easily earned the amount of it, and I therefore allow the claim for $1,000, to which I think should be added interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles (January 10, 1920) to the date of settlement.

WM. PUGSLEY,
Commissioner.

DECISION

Case 1347

Re THOMAS WILLIAM PALMER

This is a claim arising out of mal-treatment of a prisoner of war in Germany and is for the amount of $10,000.00.

At a sittings held before me at Toronto on May 13, 1924, the claimant appeared and gave evidence.

He stated he was born in England but has resided in Canada since 1910. He was an enlisted man and joined the Canadian Expeditionary Forces in August, 1914, and went to the front. He was taken prisoner of war on the 24th April, 1915, and was in prison at various camps, as follows:—

(1) Giessen, (2) Soltau, (3) Lichtenhorst, (4) Helstenmoor, and (5) Hallen.

This man was a sergeant with the forces and his claim is based upon suffering through mal-treatment as a prisoner of war.

He related his experiences and stated that on the 2nd August, 1915, while he was very ill suffering from weakness caused by hunger, he was sent out as one of a working party of forty men. Previous to leaving he fainted three times but they insisted upon his going to a place called Rocksemberg which was a kind of castle near the top of a hill and they were taken to the top of the castle so that they could not escape, then the farmers in the surrounding districts would come and pick out the men they wanted.

At the time of his enlistment he weighed one hundred and eighty pounds, and at the time he was repatriated he weighed one hundred and nine.

He stated he was too weak to work and after having been marched around the country, thirty-six men out of forty arrived back at Giessen and he was one of the thirty-six.

The Germans looked upon him and another man as being ringleaders of the party unable to work and on their return to the prison camp they were taken to the commandant's office. They were then taken to the punishment barracks and kept there for about ten days when the guard came and took him over to the military prison where he was stripped and beaten with a German belt and put into a cell, they having given him his clothes back.

This occurred about eleven o'clock in the morning and about four in the afternoon the guard brought him a loaf of bread and a jug of water. He was too sick to eat it. At the end of three or four days he was brought some pickled herring, which he could not eat, and the guard was taking them away when one of the overseers of the camp came and asked the prisoner why, and he told him he could not eat them and this overseer struck him across the face with his hand.

All the lights were removed from the cells. The only window was darkened up and he was in total darkness without any sanitary convenience for about seven or eight days. He only had a board to sleep on, then an officer came in his cell and struck him and he struck back and he was badly beaten and kicked and all his teeth knocked out. He became unconscious,—believes he was struck with a bunch of keys. After this he was left alone for probably two months still in the same cell.

After his release from the military prison, he was given one day's liberty and his chums arranged a feed for him. The Germans were watching this and they came over and confined him to the strap barracks again for fourteen days. This was in the summer of 1915.

Speaking of Helstenmoor Camp, he stated they were there for twelve months and that it was a terrible place. They would take their food provisions from them on the slightest excuse and they were not allowed to smoke.

There was another place in the camp where Russians had been in prison early in the war and this was called the Flea Palace where he says there were millions of fleas, and they were often confined there from Saturday until Monday.

There were no sanitary arrangements in this camp nor at Soltau and he described these conditions.

He stated there was nothing in his conduct which would justify their treating him so, except probably the striking of this Officer which was the result of his long persecution.

He did not have any dentist to attend him when he lost all his teeth.

He stated he has seen men go to work at Helstenmoor Camp, when they were so sick the skin on their hands was practically eaten to the bone.

He was strong and healthy before his enlistment.

He was released through Holland in March, 1918, and stated he is now (at the time of the inquiry) putting on flesh and weighs about one hundred and sixty-five pounds.

He now suffers with his nerves and cannot take in any amusement of any kind. He attributes this condition to the ill treatment and starvation while prisoner in Germany.

In Holland the doctors stated he had a broken constitution and he was sent to a convalescent home for eight months and received dental treatment there. A certificate from Dr. Ecclestone was referred to. Another report by Dr. Manning was referred to.

Prior to enlistment he was a prospector and earned about $140.00 per month. He received a small pension of about $18.75 per month and the amount of his claim is $10,000.00.

I think this claim comes within the categories of Annex (I), to Part VIII, of the Treaty of Versailles, but think that the amount claimed is excessive, but I allow it for the sum of $5,000.00 and to which I think should be added interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles, January 10, 1920, to the date of settlement.

WM. PUGSLEY,
Commissioner.

DECISION

Case 1348

Re A. E. SCHIPPEL

This claimant is a German by birth who became naturalized as a British subject in Canada in the year 1895, since which time he has been a resident of, and carrying on business in the City of Montreal.

His claim is filed by reason of his having been interned in Germany for the entire period of the war which resulted in considerable financial loss and impairment of health.

The claim is as follows:—

(1)	Loss by way of mortgage with interest which was wiped out during the absence of this man from business	$ 4,152 70
(2)	Lawyer's advice	15 00
(3)	Injury to health	15,000 00
		$ 19,167 70

This claimant appeared before me at the City of Montreal, on June 7, 1923, and gave evidence.

He states he left Canada in July, 1914, to visit Germany for the purpose of seeing his mother who was resident there and who was quite ill. He was accompanied by his wife and sister.

When war broke out in 1914, he was detained by the German authorities and kept there under surveillance until February, 1915, when he was interned at Ruhleben Camp, and not released until January, 1918.

His wife and sister were allowed to return home.

As to the living conditions in the Camp, he swears that he was quartered in racing stables, had a straw bed to sleep on and was supplied with a very light blanket.

The usual and necessary sanitary arrangements were practically absent at first and the food supplied was very bad.

As a result of this, he contracted inflammatory rheumatism for which he received no medical treatment in the camp.

He states further, that he received no treatment after his return to Canada, but produced medical certificates as to the condition of his health before he left Canada in 1914, and upon his return.

The witness further states that the reason given for his detention by the Germans was that he was a British subject and that no notice or time was given him to leave the country.

Evidence was given by Dr. Alva H. Gordon, of Montreal, which was to the effect that before his departure for Germany, Mr. Schippel was a very healthy man who never required medical attention. Dr. Gordon states he was greatly shocked at the claimant's appearance when he returned.

For a year and a half, Mr. Schippel was quite incapacitated for physical or mental activities of any kind and the doctor places the length of disability at anywhere from one to two years. The doctor further stated that this claimant had been carrying on business as a butcher in Montreal before he went to Germany and thinks that his annual income must have been between $4,000.00 and $5,000.00.

As to the amounts claimed by items (1) and (2) being Loss by way of Mortgage and the Lawyer's Fees, I do not think that either of these items can properly be sustained by the claimant, upon the grounds of direct damage, that being more or less an indirect result of this man's internment. I therefore, disallow item (1) for the sum of $4,152.70, and item (2) for $15.00.

With reference to item (3) being claim for Personal Injury, I feel that from the evidence submitted, the claimant has made a good case against Germany for the recovery of this amount.

A very important question arose in my mind as to the nationality of the claimant. I have had to consider the provisions of section (24) of the Naturalization Act, being chapter 113 of the Revised Statutes 1906, which is as follows:—

"An alien to whom a certificate of naturalization is granted shall, within Canada, be entitled to all political and other rights, powers and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject within Canada, with this qualification that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty or convention to that effect."

The provisions of this section are difficult of construction, the first portion of the section being inconsistent with the latter part, but considering the different provisions of the section, and endeavouring to give effect to the whole, I have come to the conclusion that where a citizen of a foreign state, naturalized in Canada, had ceased to be a subject of such foreign state, he did not cease to be a British subject, even when in the country of his origin

From the evidence it appears that Mr. Schippel first came to Canada in 1883, though he was not naturalized until 1895.

It appears that by the German Act of 1870, which was in force in 1895, a German lost his nationality if he resided abroad uninterruptedly for ten years, without being entered in the Register of Nationals of a German Consulate or being in possession of a Certificate of Nationality. Germany replaced this old Act of 1870 by a new one of January 1, 1914. By this new Act, a German loses his nationality by voluntarily acquiring foreign citizenship, no reference being made to an uninterrupted residence out of the country for a period of ten years.

Mr. Schippel in answer to a questionnaire sent him, stated that he went back to Germany on a visit in the year 1900, and that he did have a certificate from the German Government as to his discharge which was taken from him at Ruhleben Camp.

A summary of the facts in this case shows that this claimant first came to Canada in 1883, became naturalized in 1895, and re-visited Germany in 1900. He again visited Germany in 1914, where he was subjected to the treatment which gives rise to this claim for reparation.

It would seem that Mr. Schippel forfeited his German nationality under the old Act of 1870, by having resided out of Germany from 1883 until 1900, when he first returned to his native land after a period of thirteen years. His German nationality would also be lost under the new Act of 1914, by reason of the fact that he had become naturalized as a British subject in 1895.

I, therefore, have come to the conclusion that a man who has been naturalized as a British subject in Canada is entitled to the rights of a British subject when out of Canada, even though he did re-visit the country of his origin when it can be established that he had forfeited the nationality of such country of origin, as clearly appears to have been established in the case of this claimant.

I, therefore, recommend that the item (3) of this claim, for detention, imprisonment and impairment of health, be allowed, but that the compensation be fixed at $10,000.00 instead of $15,000.00 as claimed, and that interest should be added to this amount, at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Peace, January 10, 1920, to the date of settlement.

WM. PUGSLEY,
Commissioner.

DECISION

Case 1349

Re J. DAVIDSON KETCHUM

This is a claim arising out of the internment of a civilian in Germany and was filed for the sum of $4,000.00.

At a sittings held before me at Toronto, May 5, 1924, Mr. C. Barker appeared for the claimant and stated that he wished to withdraw this claim.

It appears that Mr. Ketchum had been studying music in Berlin and was detained at the outbreak of the war and was kept under surveillance until November 24, 1918, most of the time at Ruhleben camp. As a result of this his eyesight became impaired and his musical education was largely nullified.

The expense of sending parcels to him and the injury done him is included in the amount claimed, namely, $4,000.00.

The claim, however, has been withdrawn so that I cannot make any recommendation in the matter.

WM. PUGSLEY,
Commissioner.

DECISION

Case 1350

Re ANASTAS MIKAELOFF

This is a claim for the loss of francs 40,000 while the claimant was made a prisoner in Bulgaria.

The claimant gave a Toronto address but communications forwarded him there have been returned. He was also notified to appear before me in Toronto on May 10, 1924, but did not do so. I am, therefore, obliged to disallow the claim.

WM. PUGSLEY,
Commissioner.

Case 1351

Re WILLIAM FERGUSON

This claim has been withdrawn he having already received £118 from the War Claims Department of the Reparation Commission.

DECISION

Case 1352

Re MRS. MARY J. CLELLAND

The claimant is the widow of John J. Clelland, a private in the 13th Canadian Mounted Rifles, who died November 5, 1924, as a direct cause from the neglect of a wound in the left knee caused by shrapnel. He was taken prisoner of war and kept for three years in Germany, developing tuberculosis.

The record herein indicates that this woman and her children should receive a military pension. We sent a copy of the evidence taken at the hearing to the Board of Pension Commissioners.

This claim for the purposes of our record will have to be disallowed as being a military one and not civilian, and not coming within any of the categories of the First Annex to Section (I), Part VIII, of the Treaty of Versailles.

If Mr. Clelland had survived and could have shown injury from maltreatment by the enemy when he was a prisoner he would have been entitled to consideration, but there is nothing in the record in this case that indicates maltreatment causing him injury and his subsequent death. His death resulted eventually from the wound he received in his knee, and the Pension Authorities would do well to reconsider this case and provide for this woman and her five young children. It may be that they have done so.

The claim is disallowed.

JAMES FRIEL,
Commissioner.

April 21, 1926.

DECISION

Case 1353

Re Mrs. Elizabeth F. Jones

Claimant was a professional nurse in Paris when the war broke out and on a call from the Belgian Legation to go to Belgium to nurse Belgian wounded.

She volunteered and went to Brussels. She was assigned duty in the Royal Palace Hospital. When the enemy took possession of Brussels they continued the services of nurses in the hospital and sent their own wounded there.

Claimant was allowed to leave Brussels early in October, 1914, and joined the Red Cross and afterwards served with the Canadian army.

I do not see there are any merits to this claim as far as the jurisdiction of this Commission goes. Claimant was not maltreated and as far as the record shows, her personal effects were not taken or damaged. Her grievance is that she was not allowed to return to Paris and continue the practice of her profession and that, therefore, she suffered great financial loss.

It seems to me that if she has any claim, it would be against the Belgian Government which employed her, if they have not paid her.

This Commission cannot allow for loss of wages or prospective earnings. The claim is disallowed.

JAMES FRIEL,
Commissioner.

August 9, 1926.

DECISION

Case 1354

Re Hugh Miller, Ph. B.

We have incomplete and unsigned form of declaration not attested by any official filed with this Commission, December, 1921, in which claimant is named as Hugh Miller, Ph.B., (Brown University), (Oxford University), A.A., teacher of French and German languages. First address temporary—(5943 Gates Ave., St. Louis, Mo.) c/o G. G. Miller, Cottage St., Berwick, N.S. Nationality given as natural born British subject born March 17, 1891, South Shields, England.

Claim is for:—

(*a*)	Loss of income (as private or university language teacher in Berlin, London and America, estimated at an average of $2,400 per annum	$ 9,600 00
(*b*)	Loss in earning capacity due to break in career estimated at $500.00 per annum	2,000 00
(*c*)	Maintenance from home, at $50.00 per month	2,400 00
		$14,000 00

Occupation given as teacher and professor of modern languages formerly of Brown University now of St. Louis Co., Mo., Day School. Notice of hearing at Windsor, N.S., September, 1924, was mailed to this claimant who did not appear although notified also at the request of the Commissioner. Mr. Miller could not be located.

The claim, if it can be considered one at all, is disallowed.

This judgment is made for the purpose of our record.

JAMES FRIEL,
Commissioner.

February 18, 1926.

DECISION

Case 1355

Re DAVID G. A. MACLEOD

Claimant is a British subject born in the Shetland Islands, North Britain, who was in Canada when the war broke out and joined the Canadian Expeditionary Forces. He was taken prisoner at the second battle of Ypres and interned by the Germans in various prison camps until the end of the war. He claims for injury to his health by reason of not being operated on soon enough or properly, in respect to a bullet wound he had received.

There is no actual mal-treatment alleged and Mr. MacLeod's case was dealt with by the Pensions Board. He did not urge his claim very strongly but simply laid the case before our Commission.

Without proof of actual mal-treatment, the case does not come within any of the categories of the First Annex to Section (I) Part VIII of the Treaty of Versailles, and the claim will have to be disallowed.

JAMES FRIEL,
Commissioner.

May 1, 1926.

DECISION

Case 1356

Re EDWARD C. J. MCCRACKEN

Claimant is a Canadian who served during the war and was taken prisoner of war.

His claim is for military effects lost while in prison and does not come within the scope of this Commission.

This claim is disallowed, as it does not come within any of the categories of the First Annex to Section (I) Part VIII of the Treaty of Versailles.

JAMES FRIEL,
Commissioner.

June 19, 1926.

DECISION

Case 1357

Re L. ARDEN SMITH

The claimant is a Canadian. He was a pilot with the Flying Corps and was captured by the enemy in May 1917 and taken to Karlsrhue. He was treated all right, but they took away certain personal property from him such as beaver collar, flying helmet, gauntlets, goggles and a revolver. He says that

his captors claimed that these were trophies of war, and I think they were. At all events they are not such property as comes within the scope of this investigation.

Mr. Smith also claimed for boots and shoes, food and tobacco sent from England, but not received by him. There is no evidence that these goods were taken by the enemy.

This claim has to be disallowed as not falling within the First Annex to Section (I) Part VIII of the Treaty of Versailles.

JAMES FRIEL,
Commissioner.

OTTAWA, April 20, 1926.

DECISION

Case 1358

Re CHARLES TUCKER

Claimant is a British subject, born in England in 1893. He claims on account of mal-treatment while a prisoner of war in Germany for 10 months from March 23, 1918. He was a private in the 9th Royal Fusiliers, and had his claim before the British Military authorities and was examined by their Doctors. They allowed him a small pension for 25 weeks. In 1920 he came to Canada looking for employment, and got it. At time of hearing he was employed as a general handy man with the United Drug Company in Toronto and was earning $18.00 a week. The medical report filed with his claim, dated May 26, 1924, indicates permanent incapacity, 10 per cent.

There is no evidence of mal-treatment in this case and the claim will have to be disallowed.

This claim does not come within any of the categories to Section (I) Part VIII of the Treaty of Versailles, and is therefore disallowed.

JAMES FRIEL,
Commissioner.

July 7, 1926.

DECISION

Case 1359

Re HUBERT L. TAYLOR

Claimant is a British subject born in England, who came to this country in 1919.

His claim is on account of having been interned when the ship *Electo* of Hull, England, was held by the Germans at Hamburg at the commencement of the war. The claimant was in Ruhleben Internment Camp during the period of the war.

His claim, however, apparently has been dealt with by the British Reparation authorities who paid him £123, January 19, 1923. That takes it out of consideration by this Commission and I will have to disallow the claim as presented to this Department, but without prejudice to its being taken up again if there is any reason develops for doing so.

JAMES FRIEL,
Commissioner.

August 5, 1926.

DECISION

Case 1360

Re FRANCIS WATERS

Claimant is a British subject born in Ireland, who came to Canada in 1910 and served with the Royal Canadian Dragoons during the war. He was taken prisoner March 29, 1918, and claims for injury to health due to mal-treatment. There is no special ill-treatment proved. Claimant is already getting a pension and apparently is in a good position.

This claim is disallowed as not coming within category (4) or any other of the categories of the First Annex to Section (I) Part VIII of the Treaty of Versailles.

JAMES FRIEL,
Commissioner.

May 18, 1926.

DECISION

Case 1361

Re DANIEL MONCUR

Claimant is a British subject and formerly a soldier in the Gordon Highlanders and with the Canadian troops during the war.

He claims on account of the death of his son, Pte. David Moncur, Second Battalion, Gordon Highlanders, killed near Gheluvelt, October 31, 1914 in the following circumstances, given by the British War Office:—

"The machine gun officer states that he and Private Moncur were both wounded, and together with another man were captured by the Germans, who were round them in large numbers. He ordered them to surrender, as it was impossible to do anything; and they were ordered to carry him up some distance from where they were, which they did. Some few minutes later they were taken away, about 50 yards, and both shot. The man who shot them put his rifle right against their bodies as he fired. There was no excuse for the shooting of these men, as their captors had previously asked if they would go with them, and the officer replied that they would."

The late Commissioner found that paragraphs (1) and (4) of the First Annex to Section (I), Part VIII, of the Treaty of Versailles, cover this case, but I don't see it.

Category (1) covers—personal injury to, or death of civilians—civilians, not soldiers and whatever tribunal has jurisdiction over the brutal and unjustifiable things done to combatants on the field, this Commission has no such jurisdiction. Category (4) covers—damage caused by any kind of mal-treatment of prisoners of war. The enemy apparently declined to take decedent as a prisoner of war but if in the widest interpretation he could have been considered a prisoner of war, compensation would not fall to his dependents for mal-treatment. The damage caused by any kind of mal-treatment of prisoners of war is a personal damage and nothing is provided on that account for dependents.

Claimant is drawing $100 pension per month for himself from the Canadian Government and five shillings per week from the Imperial Government on account of his son.

I would disallow this claim as not falling within any of the categories of the Annex at the same time calling the attention of the Government to the decision given by my predecessor.

JAMES FRIEL,
Commissioner.

January 11, 1927.

DECISION

Case 1362

Re LOUIS V. LEFEBVRE

Claimant was a member of the Canadian Expeditionary Force who sailed from Valcartier in September, 1914. He was taken prisoner in the battle of St. Julien and kept in a prison camp in northern Germany until the end of the war. He claims on account of mal-treatment for which there is no special evidence and claimant has not appeared before this Commission.

He was gassed and wounded when taken prisoner and would, I think, be entitled to a pension if severely injured.

The last communication from him was dated June 26, 1923. He was then working for the Laurentide Co., Limited at La Macaza. There has been no further communication from him and we have not been able to reach him by letter or get any information about him. We wrote the doctor who signed the medical report attached to the declaration of claim, and there is no reply from him.

The claim will have to be disallowed.

JAMES FRIEL,
Commissioner.

February 5, 1927.

DECISION

Case 1363

Re GEORGE JAMES ADAMS, SALESMAN

Claimant is a Canadian. He enlisted at a little over 16 with the 15th Canadian Infantry, was wounded at the battle of Ypres and taken prisoner April 26, 1915. He was in a German hospital and in concentration camps, but claims particularly for mal-treatment. He neglected to salute a German officer not knowing he was an officer and for that was sent to a salt mine for two years, where treatment in the mine was very bad, food insufficient and conditions terrible. He was forced to work from nine to twelve hours and there contracted tuberculosis, but after the war was cured in a sanitarium.

His medical record shows 25 percentage of incapacity on account of chronic bronchitis contracted during his confinement as prisoner of war and long underground work in damp mine and states such incapacity will likely be permanent.

He is receiving a pension of 15 per cent.

He learned railroading but had to give that work up on account of his eyesight not being good enough. He has done sailing and jobs of that nature. He cannot perform hard labour.

I would allow the claimant, George James Adams, $2,000.00 with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (4), and I find $2,000.00 fair compensation to the claimant, with interest as above indicated.

JAMES FRIEL,
Commissioner.

May 12, 1926.

DECISION

Case 1364

Re HENRY BASIL TRIDDEN BOYCE

The claimant is a Canadian. He was taken prisoner while attached to the Flying Corps and kept in a German prison camp for twelve months. They took from him certain personal property, not military, but the records are not very clear. The amount is small and I would allow it as declared, $32.00.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (9), and I find $32.00 is fair compensation to the claimant with interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, to date of settlement.

JAMES FRIEL,
Commissioner.

April 9, 1926.

DECISION

Case 1365

Re MOISE AUGER

Claimant is a Canadian. He was a horseman on the ss. *Mount Temple,* when that ship was sunk by enemy submarine off the coast of France near Brest, on December 6, 1916. He was taken prisoner and held in Brandenburg and other camps from December 6, 1916, till the end of the war during which time he was compelled to work on railway construction and other heavy work, owing to which treatment he suffered considerably. He was operated on there for hernia and had to be operated on again when he returned to Canada.

Lately he has become of unsound mind and is now a patient in Beauport Hospital. His brother-in-law, Joseph Forest has been appointed "Curateur" of his person and estate, who appeared before this Commission and asked that the amount claimed by Auger be increased. It is not claimed that insanity was brought on by claimant's experience in Germany.

Following the British scale and considering the elements of internment, forced labour and illness, I would allow claimant $1,500.00 with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII of the Treaty of Versailles, category (1), and I find $1,500.00 fair compensation to the claimant, with interest as above indicated, payable through his Committee.

JAMES FRIEL,
Commissioner.

September 4, 1926.

DECISION

Case 1366

Re STANLEY W. BARNDEN

Claimant was born in England in 1887. He came to Canada in 1906, and took up a farm in Alberta. He sold his farm in 1912, and went into the real estate business in Calgary. He enlisted with the Fort Garry Horse, January 1, 1915. He was taken prisoner by the Germans at Cambrai, November 21, 1917, and taken to Muenster Camp. From there he was sent to work behind the lines in Belgium, where he was very badly used being forced to work with

clogs the pressure of which caused an abscess. He was operated on without an anaesthetic, and he was laid up for three or four months. He was then sent back to Germany and forced to work with pick and shovel while ill. He developed pleurisy and later tuberculosis. The medical record says that his incapacity may be permanent. He has a shrunken plura, for which there can be no treatment.

Claimant is rated at 50 per cent disability by the Pension Board and draws $50.00 a month. He earns another $50.00 a month from his occupation, but can only work three or four hours a day. His salary before the war was $1,500.00 a year. He was married in 1922.

I would allow claimant $3,000.00 damages for injury caused by mal-treatment when a Prisoner of War.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (4), and I find $3,000.00 is fair compensation to the claimant, Stanley W. Barnden, with interest at the rate of 5 per cent per annum from January 10, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

April 29, 1926.

DECISION

Case 1367

Re ARTHUR BOULTON

Formerly ship's fitter, studying for marine surveyor

Claimant is a British subject born in Belfast, Ireland, 1895, who came to Canada in 1913 to reside permanently.

When war broke out he joined the 3rd Battalion, Canadian Expeditionary Force, in Toronto where he was then working and making $130.00 per month with splendid prospects for advancement.

He was severely wounded and captured by the enemy in one of the engagements in April, 1915, and taken to a hospital in Germany where he was kept three months and then sent to work. He refused to work in the manufacture of enemy munitions and for that was beaten and put in a dungeon in solitary confinement for three months. At the time he was put in the dungeon he was in good physical condition and had normal eyesight. When taken out of his solitary confinement he was in the last stages of starvation and had lost the sight of both eyes. With others he made an attempt to escape. Some time after being re-captured he was brutally and severely beaten. This practically finished him.

His condition is graphically set out in his claim:—

"Although before injuries, healthy, athletic, capable person with expectation of long life and happiness. Now a permanent cripple. No future, ill health, unable to marry, work, read, think or enjoy exercise or any other form of amusement, with probability of requiring an attendant or nurse during the remainder of his life and constant medical care. This seems a most deserving case; the claimant is now totally dependent on the care and financial support of his mother without whom he might have starved."

The medical record bears out the description.

The result of injuries is given as "Disseminated sclerosis of the spinal cord." "Totally incapacitated ever since he left the prison camp." "In regard to employment in the general labour market, he is 100 per cent disabled." "The probable and further duration of such incapacity is permanent and progressively worse." "The vision of right eye is impaired fifty-five per centum, (55 per cent) and the left eye fifteen (15 per cent). Hearing defective; worse in left ear."

It would serve no good purpose to give further details. I am setting these down because he has only been given a trifling pension. I cannot understand the action of the Board of Pension Commissioners. It is probably none of my business, but having gone over the record in this Office several times; having heard what was sworn to and alleged by the man's comrades and having persons of authority who know the circumstances and especially having had the claimant before us who was the most pitiful wreck of man I have ever seen, I think a substantial compensation should be awarded, so that during the probable limited time he has to suffer on, it may be in some degree of comfort and independence.

I would allow the claimant $15,000.00 with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (4), and I find $15,000.00 is fair compensation to the claimant with interest as indicated.

JAMES FRIEL,
Commissioner.

May 18, 1926.

DECISION

Case 1368

Re FREDERICK BRYCE

Claimant is a British subject, born in Scotland, 1897, who came to Canada six months after the war.

His claim is on account of internment. He was an ordinary seaman on the *Rubislaw*, a merchant vessel, running between Aberdeen and Hamburg with freight and passengers, when that vessel was interned at the latter port.

The crew were imprisoned in the hulks where they remained for about six weeks and were then transferred to Ruhleben.

The owners paid half his wages to his mother until she died, otherwise he received no wages.

He was not released until after the armistice, so that he was interned four years and five months. He has no complaint about his treatment.

I would adapt the British Admiralty Scale to this case and allow him $1,625.00 solatium with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

May 19, 1926.

DECISION

Case 1369

Re SAMUEL CRANSTON

The claimant is a British subject born in England in 1876, living in Canada when the war broke out and working in the Grand Trunk Railway Shops at 25 cents an hour. He had been section foreman on the Canadian Pacific Railway at $2.90 a day. He enlisted at Winnipeg in the 43rd battalion and was seriously wounded at the battle of Courcelette in October 1916. He was taken prisoner by the enemy and moved to different hospitals in Germany, but was nearly starved and was forced to work while undernourished. The medical records show that he contracted Atrophic Gastritis and general debility as a consequence of bad feeding and over work while undernourished. The record

places his percentage of incapacity at 70 per cent in his own occupation and 50 per cent in regard to employment in the general labour market. The incapacity may gradually lessen. In the meantime the man has been under treatment and unable to work ever since he was liberated. He gets a 25 per cent pension allowance equivalent to $28.75 a month. He has no other means. He has a wife and daughter now 14 years old.

I would allow this claim at $4,000.00 for injury to health by reason of mal-treatment when he was a prisoner of war.

The claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (4), and I think $4,000.00 is fair compensation to the claimant Samuel Cranston, with interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, until the date of settlement.

JAMES FRIEL,
Commissioner.

April 6, 1926.

DECISION

Case 1370

Re GEORGE CRAIGEN

Claimant is a British subject, born in Scotland July 17, 1885, who came to Canada in April or May 1919. He was second engineer on the British Merchant Marine ss. *Minnetonka*, 13,528 tons, sunk by enemy submarine on January 30, 1918, with the loss of four lives in the Mediterranean on a return voyage in ballast from India.

Claimant and other survivors of the crew were taken on the submarine to Germany and interned in camp at Karlshrue, and afterwards in Brandenburg and Schweindnitz camps until December 1918.

This claim is for personal injury and loss of earnings through injury to health, restraint of person, expenses for clothing, etc., loss of effects on vessel and of parcels of clothing sent by friends to prisoner.

Loss of prospective earnings cannot be allowed. I think that this case would be fairly dealt with by adopting the British Reparation Claims' scale and allowing claimant solatium or torpedo money on account of his ship being torpedoed, compensation for loss of personal effects according to the scale, less the £50 insurance received by him, solatium for internment and illness during internment and post internment disability (temporary).

I would allow claimant $1,600.00.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, categories (1) and (9), and I find $1,600.00 is fair compensation to the claimant, George Craigen, with interest at the rate of 5 per cent per annum from January 10, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner

April 30, 1926.

DECISION

Case 1371

Re DAVID DUNCAN

Claimant is a British subject and a native of Scotland. Just before the war broke out he was a passenger on the *Prinzessen*, a German liner, from South Africa with transportation to London. He was arrested at Hamburg, August 4, 1914, but managed to get away with a loss only of his personal effects and some

money for which he claims $150.00. His claim for delay, insults, illegal arrest, etc., cannot be allowed, as there was no serious harm done him. On the contrary he seems to have been quite fortunate.

I would allow the claim for personal effects and for money lost as claimed $150.00, with interest at the rate of 5 per cent per annum from the date of loss, August 4, 1914, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9) and I find $150.00 with interest, as indicated above, fair compensation to the claimant.

JAMES FRIEL,
Commissioner.

April 22, 1926.

DECISION

Case 1372

Re LUCIEN DESILETS

Claimant is a Canadian. He shipped from the port of Montreal as a horseman on the ss. *Mount Temple*, transporting horses in November 1916 and on December 6, 1916, the ship was torpedoed and sunk off the coast of France near Brest. Claimant was taken prisoner and held as such in Branderbrey Camp, Germany, and was exchanged March 17, 1918.

He claims for loss of wages and loss of kit.

Claimant does not declare for the personal injury but says the reaction from the torpedoing and the shock, paralyzed one eye. There is no medical record. He was then 48.

His claim for wages cannot be allowed but I would allow claimant for solatium, $1,000.00 and loss of personal effects at the amount declared, $95.00, all with interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles, January 10, 1920, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, categories (1) and (9) and I find $1,095.00, fair compensation to the claimant, with interest as above indicated.

JAMES FRIEL,
Commissioner.

August 7, 1926.

DECISION

Case 1373

Re JOHN THOMAS EMERY, c/o CASSIDY'S LTD.

Claimant is a British subject, born in England, and resident in Canada for some time. At the outbreak of war he was employed as a crockery packer in Retingen near Dusseldorf with an English concern called Twyford's Limited. He lived there with his wife and girl in a rented house. He owned the furniture.

The British women and children were allowed to leave the country, but were not permitted to take any of their belongings except the clothes they had on. The men were interned, and claimant was a prisoner in different camps from September 11, 1914, to Armistice Day, November 11, 1918. Claimant's wages were £2 a week, and the value of his furniture and effects taken by the Germans was about £100.

I would allow this claimant solatium for internment on the scale adopted by the British Reparation Claims' Department in accordance with time interned $1,250.00 and $500.00 for personal effects as claimed.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, categories (1) and (9), and I find $1,750.00 is fair compensation to the claimant, John Thomas Emery, with interest at the rate of 5 per cent per annum from January 10, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

April 30, 1926.

DECISION

Case 1374

Re JAMES CLARENCE EAGLES

Claimant is a Canadian. He was master of the sailing ship *Drummuir*, 1,844 tons, captured by the *Leipsig*, of Admiral von Spey's Fleet, off Cape Horne, December 2, 1914.

The ship was relieved of its cargo of coal and everything which could be used by the enemy. The captain and crew were taken prisoner but escaped during the battle of Falkland Islands in which Admiral von Spey's Fleet was destroyed, by Admiral Sturdee.

Captain Eagles claims for personal effects lost and wages which he might have earned.

The claim for prospective earnings cannot be allowed but I would allow the claim for loss of personal effects at the amount declared and proved—$1,415.78, with interest at the rate of 5 per cent per annum from the date of loss, December 2, 1914, to date of settlement, and I would allow solatium or torpedo money to the claimant, adapting the British Admiralty Scale, $1,000.00, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, categories (1) and) (9), and I find $2,415.78 is fair compensation to the claimant with interest as above indicated.

JAMES FRIEL.
Commissioner.

May 14, 1926.

DECISION

Case 1375

Re WILLIAM GEORGE FLINT

Claimant is a Canadian, born in Montreal in 1880. He was in Leipsig when the war broke out visiting his mother and sisters who were there studying music.

Mr. Flint was not permitted to leave Germany but he was not molested or otherwise interfered with until the end of December, 1914, when he, with others, was requested to leave Leipsig owing to its being an air station. He then went to Chemnitz and lived in an hotel until February 4, 1915, when he was arrested and lodged in jail and kept there for about 10 days and was then taken to Ruhleben prison camp where he was detained until the end of the war. He got away November 23, 1918. His mother and sisters were permitted to leave Germany Novmber, 1914.

The claim is for loss of salary for four years, $8,000.00, physical and mental damages and damage to his professional calling $4,000.00.

The record does not disclose any maltreatment.

Claimant had to provide his own food and clothing in the camp and it was not a very comfortable place. There were 4,500 interned there.

Claimant has nothing to complain of regarding his treatment in the camps. He had an attack of lumbago while there due to the dampness of the quarters.

There can be no award for wages lost or prospective personal earnings which are not by way of direct damage, but rather the result of war measures and their consideration does not come within the scope of this inquiry. The same thing would apply regarding loss of opportunity in the claimant's profession. Outside of that feature of the case, Mr. Flint, had he not been interned, would most likely have been in the war receiving moderate pay, and if he had become a casualty he or his dependents would receive a small pension.

The British Reparations Board allowed a solatium for internment and a special allowance in cases of sickness and I think I would adopt that method in dealing with claims for internment.

I would allow the claimant $2,000.00 solatium for internment for three years and $250.00 on account of illness during internment with interest on both sums at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles, January 10, 1920, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (1), and I find $2,250.00 is fair compensation to the claimant with interest as indicated above.

JAMES FRIEL,
Commissioner.

April 22, 1926.

DECISION

Case 1375

Re JOSEPH GELIN

Claimant became a naturalized British subject in Canada in 1911. He was born in Odessa, Russia, in 1872 and came to Canada in 1900, where he seems to have been very successful in farming, ranching and trading. When the war broke out he and his brother, Moses Gelin, who also has a claim, were travelling in Europe and were actually in Berlin. Claimant was not permitted to leave Germany and was interned in Ruhleben Camp, November, 1914, and there detained until October 1, 1917, when, on account of his health, he was transferred to Holland.

Claimant was a splendid athlete, great horseman and outdoor liver, and the confinement had more than the usual bad effect on him. The medical record says he contracted "chronic anthritis, chronic pulmonary tuberculosis, on account of the condition of the camp, poor food and want of medical care". The doctor places the claimant's incapacity at 100 per cent in his own occupation and 75 per cent in regard to employment in the general labour market.

Joseph Gelin appeared twice before the Commission and I do not think his condition is quite that bad. He appeared to be a man who would have many more years of activity before him. He and his brother are now engaged in the wholesale dry-goods business and boots and shoes and is, he says himself, quite independent.

I would allow claimant $1,500.00 solatium on account of internment and $8,500.00 for injury to his health, also $375.00 which is the amount claimed for personal belongings lost, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII of the Treaty of Versailles, categories (1) and (9), and I find $10,375.00 fair compensation to the claimant, with interest as above indicated.

JAMES FRIEL,
Commissioner.

June 28, 1926.

32907—29½

DECISION

Case 1377

Re MOSES GELIN

Claimant became a naturalized British subject in Canada in November, 1911. He was born in Odessa, Russia, in 1874 and came to this country in 1899, where in partnership with his brother, Joseph, he seems to have been very successful in farming, ranching and trading.

When war broke out, he and his two children and his brother, Joseph, were travelling in Europe and were actually in Berlin. Claimant and his children were not permitted to leave Germany and he was interned in Ruhleben Camp on February 2, 1915, until March, 1918, when he was transferred to Holland. He claims for internment and on account of injury to health, and also for loss of personal belongings. Claimant, before interned, was subject to appendicitis and owing to want of proper diet, the suffering on that account was greatly augmented. He had several attacks in the camp. The medical record signed by Dr. Roden, gives him "partial disablement about 50 per cent".

At the hearing claimant said there was no trouble with his lungs—the only trouble was on account of the appendix occasionally and his nerves were affected pretty badly.

He is now in the wholesale dry-goods business with his brother, and I believe doing well. They both seem to be independent.

The children were not badly used but their father was not allowed to see them. They were sent to school and he finally got them transferred to Canada in 1916.

I would allow claimant $1,500.00 solatium on account of internment and $3,500.00 for injury to health; also $406.00 amount claimed on account of loss of personal effects, all with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII of the Treaty of Versailles, categories (1) and (9), and I find $5,406.00 fair compensation to the claimant, with interest as above indicated.

June 28, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1378

Re ELMER L. LUCK, M.A.

Claimant is a Canadian. When the war broke out he was in Germany studying for an advanced degree. Owing to the influence of some of his professors, he was allowed free on parole but not permitted to leave the country.

He lost some property, books and other personal effects, which were taken from him.

He claims also for loss of salary on account of detention. This part of the claim cannot be allowed.

I would allow for the loss of personal effects at the amount declared, $300.00.

This claim falls within the First Annex to Section (I), Part VIII of the Treaty of Versailles, and so far as it appertains to personal effects, comes under category (9), and I find $300.00 is fair compensation to the claimant, with interest at the rate of 5 per cent per annum from the ratification of the Treaty of Versailles, January 10, 1920, to date of settlement.

April 28, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1379

Re GJERT MYHRE

The claimant is a British subject naturalized in Canada in 1915. He was master of the steam trawler *Triumph* captured by enemy submarine off Cape Canso, N.S., August, 1918. He seems to have been the only British subject on board (see claim of the National Fish Co., Limited).

Claimant would be entitled to the usual solatium and allowance for loss of personal effects and is entitled to a share with the fishermen in their portion of the catch, which amounts to $1,706.00

I would adapt the British Admiralty Scale to this case and allow Captain Gjert Myhre, $900.00 solatium and for loss of personal effects, to which may be added $100.00 for his share in the catch.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, categories (1) and (9), and I find $1,000.00 fair compensation to the claimant, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

June 28, 1926.

DECISION

Case 1380

Re GEORGE N. PURDY (NOW DECEASED)

Captain Purdy, a Canadian, aged 47 years 11 months, was Master of the Canadian ss. *Pandosia*, 3,300 tons gross tonnage, which was in the Port of Hamburg, Germany, at the time the war broke out and was seized by the German authorities August 4, 1914. The ship had not been allowed to leave the Elbe on August 2nd and 3rd and the Captain was detained on those days. The war had not been declared, and he was kept prisoner on board ship from the declaration of war until taken to the Hulks in the Harbour, October 16, 1914. He was taken from the Hulks, November 6, 1914, and interned in Ruhleben Camp until November 22, 1918. On the 6th January, 1919, he gave notice of his claim to the Custodian for Enemy Debts at Ottawa, in respect to a set of war charts, navigating instruments and clothing, which he valued at £250-0-0, on account of which he received £100-0-0, from the British Board of Trade. He, therefore, claimed so he stated, for the balance—£150-0-0 against the German Government. On April 10, 1919, he filed a formal claim with the British Foreign Claims Office, in respect to effects as follows:—

1 Telescope $25.00, 2 prs. Binoculars, $55.00, 1 Sextant, $55.00	$ 135 00
Nautical instruments $60.00, Nautical Books $50.00, 1 gun $100.00	210 00
1 Revolver $20.00, 3 suits clothes $65.00, 6 suits white clothes $90.00	175 00
1 Trunk $20.00, 1 Portmanteau $15.00, 1 clothes bag $5.00	40 00
6 suits underclothing $30.00, socks, collars, hats, ties, etc. $30.00	60 00
2 sleeping suits $10.00, 1 overcoat $25.00	35 00
2 prs. boots $10.00, 6 shirts $12.00, 1 oil coat and hat $7.50, 1 pr. rubber boots $5.00	34 50

Sundries, umbrella, cape, brushes, etc., $20.00	20 00
1 set world charts complete with books of directions	500 00
Cost of food	900 00
Cash paid out for use in prison camp	700 00
Paid for clothing	137 50
Suffering from chronic bronchitis and rheumatism causing total disablement caused by poor food, poor housing and exposure while in prison camp. As I am unable to follow my calling, I therefore, claim for same including doctors bills	6,250 00
	$9,197 00

He stated he received £100 from the British Board of Trade, toward his effects and that the owners of the ship, William Thomson & Co., Limited, of Saint John, N.B., paid him his salary up to the time of leaving Ruhleben Camp. He says that the values put on the effects are the prices paid before the war and that replacement would cost double.

Attached is certificate from C. A. Webster, M.D., of Yarmouth, N.S., dated March 4, 1919, to the effect that Captain Purdy had been under the said doctor's care from February 1, 1919, suffering from chronic bronchitis and chronic rheumatism, contracted in Ruhleben Camp, during internment, which disease unfits him for duty.

Claimant made a formal declaration of claim to this Department December 29, 1921, in which he declares for—

Value of effects taken	$ 1,249 00
For detention, loss of salary, etc.	16,350 00
Cash paid for foods and clothing	437 50
Doctors bills and medicine	75 00
	$18,112 00
He credits the amount received from the British Board of Trade at exchange rate	390 00
	$17,722 00

He claims for total disablement and for loss of sixteen months salary and doctors bills. His salary he declares was $150.00 per month clear of expenses, before the war and would be double that during the war.

The declaration states that shortly after his imprisonment the matter of exchange of prisoners came up but as the proposed terms were ten Germans for one Britisher, the allies would not agree and his companions were given to understand that they would be recompensed. The medical report by Dr. Webster, dated December 24, 1921, again gives—chronic bronchitis and chronic rheumatism, attributed to confinement in horse-stalls and improper food and clothing while at Ruhleben Camp. It also states total incapacity for one year, partially incapacitated for two years—the then present percentage of incapacity 50 per cent—probable duration of such incapacity—one year. No injury to sight or hearing.

Captain Purdy became insane on the 30th August, 1923, and was taken to the Asylum at Dartmouth where he died November 25, 1923.

He left a will dated February 9, 1923, of which his brother James V. Purdy, and his sister Ella Maude Purdy are executors.

The claim was heard at Saint John, N.B., by the late Commissioner on May 22, 1924, and August 22, 1924.

He left an estate of $31,902.51 nearly all in money, Government bonds and mortgages. There was $12,421.42 in the bank.

Captain Purdy, it appears, never married. His mother and two maiden sisters, Ella Maude Purdy, and Mary R. Purdy, lived on a little farm they owned at Plymouth, and he practically supported them. When his mother died, he continued to support the sisters. One of them was partially blind. At the time of his death, their ages were 49 and 44 respectively.

In his will, after bequests of $250 each to two nephews, he released to his brother, Charles Purdy, debts amounting to $2,400; to his sister Nettie Churchill, he gave $2,220 in money and a mortgage of $800; to his sister Sarah B. Sims $2,000; to his sister the said Ella Maude Purdy $5,000; and to the other sister Mary R. Purdy $6,000 and his household furniture, farming tools, etc., to these two last-mentioned sisters, share and share alike. If either of said two sisters died before Captain Purdy, her legacy was to go to the surviving one. He gave his brother James V. Purdy $6,000 and his homestead, lands and premises (inventoried at $750). After payment of debts, expenses and legacies, the residuary estate was to be divided equally among his said brothers and sisters living at the time of his death.

On final settlement of the estate, Ella Maude Purdy, received $5,527.93 and Mary R. Purdy $6,527.94. They have both filed claims with this Commission as dependents of the deceased.

This claim was presented by the executors to the late Commissioner at Saint John, May 22 and August 22, 1924.

The evidence of Captain Patterson, of the *Trebia*, a sister ship of the *Pandosia* and who was also interned at Ruhleben camp, and who has a claim, was read into the record. He described the conditions and what had happened. He, himself had become totally disabled at the time on account of the treatment but had recovered, except that his nerves are not as good as they used to be.

The executor, James Purdy, gave evidence of what Captain Purdy was making before he went to Germany. He said he was a big hearty man. He weighed 217 pounds. He told James Purdy that after he had been interned in prison for six months, he only weighed 152 pounds. For about six months after he got home, he seemed to be normal but that after that there was some re-action and he seemed to go down. He became an old man, his nerves all gone.

As to the dependent's sisters, Captain Purdy used to send them sometimes $50 per month and sometimes more. What they did not use, they put in the bank.

Dr. Charles A. Webster, physician of 38 years' experience had treated Captain Purdy after his return from Germany, commencing December 31, 1918. He had known the Captain well, who was a robust, healthy man of good habits but there was a decided change after his return in his physical condition. He was suffering from chronic bronchitis and arthritis. He looked badly and was nervous and seemed not to be able to fix his attention very well. Captain Purdy spoke of the exposure he suffered and of the bad sleeping accommodation in Ruhleben. He said he had slept in horse-stalls where there was no clothing or bedding and they were under rigid surveillance.

Dr. Webster, swears that Captain Purdy's condition would be entirely due to exposure and lack of medical attention. His bronchitis improved and his rheumatism somewhat, but his nerves did not improve any. He was not able to fix his mind to his business and grew gradually worse.

The doctor attended him from 1918 to 1923. He was nursed at the home of his two sisters who cared for him. As to his insanity, the doctor would attribute it entirely to his internment, his inability to assume command of his vessels, the mental condition that would arise from his internment. He attributes his death to what he suffered during his imprisonment.

I would allow claimant's estate the balance he claimed in the first place on account of the personal effects taken—namely $750.

The claim for loss of wages will have to be disallowed. As a matter of fact when he got home he settled with the owners for his wages, no doubt under the contract of hire and he received, so it appears from the record of Captain Patterson's claim, about $12,500; moreover, his estate has claimed against the German Government for wages under Clause 4 of the Annex to Section IV Part X of the Treaty of Versailles and that claim is in process of adjustment. The British Reparation Claims Department ruled that category (2) in respect to internment provides only for damage caused by acts of cruelty, violence, or mal-treatment (including injuries to life or health as a consequence of internment). The Annex is framed on the footing that a belligerent has a right to intern nationals of his opponents when found in his own or occupied territory, subject to giving proper treatment. There is no provision for loss of wages during internment but in all civilian internment camps in Germany and other enemy countries, a certain amount of unnecessary hardship was experienced by internees, amounting in the opinion of the Commission to mal-treatment within the meaning of Annex (I) so as to entitle all internees to some compensation, even though no definite injury to health had resulted. They adopted a scale of solatium for internment in the hulks and prison camps and under that scale, Captain Purdy would have been entitled to about $1,300 which I will allow his estate as solatium earned by him.

The claim for money paid for food and clothing will be disallowed as living expenses would have to be paid by him in any event. In that connection I am not so sure that part of his trouble was in not spending more for his own comfort and sustenance. According to Captain Patterson's evidence, they were permitted to buy blankets and clothing in England and to purchase food in the camp. Captain Purdy at the time was a man of private means and income outside of what he was to receive from the owners.

The doctor's bill for $75 will be allowed.

Had he lived, he would be entitled to something on account of injury to his health but I do not see that his estate is entitled to any compensation on that account. I will allow something to the sisters, Ella Maude Purdy and Mary R. Purdy, being the only dependents and the only ones who may be considered to have suffered pecuniary loss by his death. Whatever is awarded them will be without prejudice to their share in what is herein awarded the estate.

This claims falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, categories (2) and (9) and I find $2,125.00 fair compensation, payable to James Purdy and Ella Maude Purdy, executors under the will of Captain Purdy, deceased, with interest at the rate of 5 per cent per annum from the 10th day of January 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

October 9, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1381

Re JAMES ROSS

Claimant is a Canadian.

He shipped from Montreal under the name of Charles Jackson, as a cattleman on the ss. *Mount Temple*, in November, 1916, and was taken prisoner when that ship was captured by the enemy raider *Moewe*, December 6, 1916, and was interned in Germany in Branderbrey, until the end of the war.

His kit worth $95.00 was taken from him.

I would allow this claim at $1,595.00 with interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles, January 10, 1920, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, categories (1) and (9), and I find $1,595.00 fair compensation to the claimant with interest as stated above.

JAMES FRIEL,
Commissioner.

August 10, 1926.

DECISION

Case 1382

Re Reverend T. B. R. Westgate, D.D.

Claimant is a Canadian citizen, born at Lambton, Ontario, September 22, 1872. His claim is on account of ill-treatment by the German authorities in the German East Africa Colony where at the commencement of the war he was principal of the Huron Training College of the Church Missionary Society at Kongwa, the same being a Missionary Society of the Church of England in Canada. Claimant had been a missionary first among the Indians in South America (1898), afterwards in German East Africa from 1902 until the time the war broke out in 1914 when the mission station was destroyed. He was getting ready to return to Canada, having been called home by the Canadian Church. He was detained and remained in East Africa until 1917. Dr. Westgate is now Western Field Secretary of the Church of England in Canada. At the time of his trouble his wife and children were in England.

From the time war broke out until May 27, 1915, claimant was allowed to remain within the boundaries of the mission property, but was not allowed to carry on any work. He was removed to a concentration camp at Kiboriani about ten miles from the mission, May 27, 1915, and was interned there until May 30, 1915. His rifle and shot gun were taken from him. May 31, 1915, he was sent out under charge of a German soldier, marched ten miles down the mountain side, rode ten miles and proceeded by train to Tabora Camp where he arrived June 1, 1915. During the first two nights in camp he was obliged to sleep in the same dormitory with the Italians with whom he had travelled in the train, amongst whom were contractors, planters and ordinary labourers. He was transferred to the dormitory assigned to the British civilians, a room approximately 16 feet wide by 80 feet long and crowded at times with over thirty prisoners (quoting from his complaint to the British Government). Each bed was 3 feet in width. His money, except a small amount, was taken from him and was returned in monthly allowances to pay for fruit and vegetables to supplement the food supplied. He did not have to work, the other prisoners did. His request to be transferred to Kiboriani Camp where the other members of the Mission Society were interned, was refused. He was told that he knew the natives too well throughout Ugogo and had too much influence over them. On March 11, 1916, he was imprisoned in a cell off the guard room which he describes as approximately 8 ft. 6 ins. wide by 10 feet long and 15 feet high, possessing only one aperture for admitting light and this about 1 ft. 6 ins. by 2 ft. 6 ins. He was kept there until March 13, 1916, when he was brought before a judge and told that he was suspected of aiding the escape of three prisoners in whose possession a map had been discovered which was traced to an atlas belonging to the claimant. He was able to show that the map had been stolen and was set free, but complains that no apology was made. For these three days detention he wants $14,000.00

He was placed in another cell in the guard room July 3, 1916, and kept there two days for some minor infringement of the rules, for which he claims $16,000.00

On July 16, 1916, he was permitted to leave camp and live in the town, where provision was made for him to live at the school along with other missionaries previously set free. They were all ordered back to Tabora Camp on July 25, 1916. This was preliminary to repatriation on August 23, 1916. Negotiations for repatriation having fallen through he was given permission to visit town as often as he wished between the hours of six a.m. and 7 p.m. He left the camp altogether September 2, 1916, the Government finding him house accommodation and giving him living allowance. Under these conditions he was found when the town surrendered to the Belgian Army September 19, 1916.

It was open then to claimant to leave the country as the other missionaries did. He joined the Imperial Troops there as a chaplain and served with them until the end of the war. He was appointed as inspector in the Military Labour Bureau, a carrier corps, and was a sort of commissioner for the British Government to look up maltreatment of Europeans and Asiatics. He received military pay.

His salary as missionary went on all the time he was interned and his Society looked after his wife and children. He was very useful as he could speak to the natives. He says he helped to gather probably one thousand porters who had run away, and he brought them back. He acted as interpreter down at the Coast as well as giving evidence as a Crown witness at the trial of the Germans. He was out on special duty looking for the German Column and found it breaking 150 miles away. He seems to have been a very useful man. He was troubled with gall stones in the prison camp and later while in pursuit of the Germans. He came home as chaplain on the hospital ship *Suez*. He was operated on for gall stones and also for appendicitis, and lost one lung. All this occurred after he got home.

The Canadian Military authorities gave him a pension of about $315.00 a year. The medical report signed by Dr. F. A. Young of Winnipeg, gives the claimant's percentage of incapacity in December, 1921, as 25 per cent in his own calling, and says that it will be permanent. This report attributes the loss of health to infection in camp at Tabora. Dr. Young was not examined at the hearing of this claim. The claimant says that the Military Authorities dealing with pensions told him that the trouble started in the prison camp, but it was aggravated on service.

It is noted that in the letter of the General Secretary of the claimant's Society, written July 8, 1913, to Dr. Westgate then in London, offering him the position he now has of Field Secretary in Winnipeg for Western Canada at a salary of $2,500.00 per annum, the Secretary mentions his reasons why claimant should not return to Africa at the time "and expose yourself to re-infection by the malarial fevers of East Africa." The claimant's salary in 1914 was $1,500.00 a year, with a maximum to be reached of $2,500.00 in accordance with the years of service and number of children. His salary at the time of the hearing in Winnipeg, 1925, as Field Secretary of the Missionary Society, was $3,250.00. He travels from the Yukon to James Bay, and from Fort William to the Coast, and seems still to be doing a good deal of efficient work.

This case presents some difficulty. It is not helped at all by Dr. Westgate's "Causes for complaint" submitted to the British Government, which run from numbers 1 to 30, the first being that he was not given notice on the commencement of the war between England and Germany so that he could quit the colony, and the last being that up to the time of filing this statement he had not been informed as to whether the court-martial case is still sub-judice or has been

allowed to drop, with a lot of other trivial matters in between, some of them rather indicating that his treatment was unusually good. He complains of the train accommodation in his journey to the internment camp, having to march for the first part of the journey; that he was obliged to pay the carriage of his luggage; that he was obliged to attend roll calls; that he was obliged to take his meals in a common refectory and sleep in a common dormitory; that he was subjected to the indignity of having all his boots and slippers taken away from him each evening at 9 p.m.; that he was obliged to leave his helmet in the mess-room every night, and similar foolishnesses; that he was not allowed a personal servant at the expense of the Government; that he had to wash his own cup, plate and cutlery after each meal, etc.

This Commission has had to deal with the records and evidence of men who were in German camps forced to work in mines and in the fields, go without food and suffer heart rending ill-treatment, away from their homes and all they were used to, and really Dr. Westgate's complaint does not make for sympathy. The Commissioner does not think it at all proved that his subsequent afflictions were due to maltreatment in the prison camps. At the same time considering his position, and the fact that he was closer interned than other missionaries, probably owing to his knowledge of the country, and the service which he afterwards did render, he is entitled to some consideration on account of his internment, which otherwise he would not receive at the hands of this Commission, because he has proved no actual injury from maltreatment. I would recommend that he be allowed $2,000.00 as solatium and $182.45 for his personal property taken by the enemy as declared.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, categories (1) and (9), and I find $2,182.45 is fair compensation to Rev. T. B. R. Westgate, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

If he is entitled to anything more than his present pension for injury to health it should be a matter for the Pensions Board.

JAMES FRIEL,
Commissioner.

April 10, 1926.

DECISION

Case 1383

Re FREDERICK WHITTAKER

Claimant is a British subject, born in England in 1891. He came to Canada in 1910, and when the war broke out went across with the First Division, 11th Battalion. He was transferred to a British Battalion and was captured by the enemy at the battle of Ypres, April 24, 1915. He and some companions refused to make munitions for the enemy and were beaten and ill treated, and sentenced to be shot without trial. The British Officers intervened and the prisoners were given a trial and condemned to two years confinement, which for six months was accompanied by the utmost cruelty. Later they were sent to a prison in Cologne, where their treatment was somewhat better.

The claimant got back to Giessen on a farm job in July, 1917. He escaped from there and was re-captured and served 21 days in solitary confinement in the cells, and was afterwards kept in strict confinement and forced to work, emptying coal cars and doing other heavy work, with very little food. The Medical Report gives his condition as one of general weakness and debility, due to bad treatment whilst a prisoner-of-war in Germany. He weighed 135 pounds the day he was put in prison, and when he came out he weighed 98 pounds. His nervous condition is bad. There is a continuous twitching of one of his eyes

This man claims $2,500.00, and I am going to allow it for maltreatment whilst a prisoner-of-war.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (4), and I find $2,500.00 is fair compensation to the claimant, Frederick Whittaker, with interest at 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

May 12, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1384

Re ELLA MAUDE PURDY AND MARY R. PURDY

Claimants both Canadians are sisters of the late Captain George N. Purdy whose case was dealt with in decision 1380. They were his only dependents. Prior to his internment in Germany in 1914, he had supported the two claimants and his mother on their small farm at Plymouth, sending home on an average of $75.00 per month. Ella Maude Purdy, owing to impaired eyesight, was unable to earn a living and her sister, Mary R. Purdy, the other claimant, had to remain at home to care for her mother who died May, 1919, aged 82 years.

After the return of Captain Purdy in December, 1918, in ruined health from his internment in Ruhleben Camp, Germany, the two sisters nursed him through his illness during which he lost his mental faculties, until his death on November 25, 1923. He was 57 years of age at the time of his death. The claimants, Ella Maude Purdy, was then 51 and Mary R. Purdy 49.

Ella Maude Purdy received $5,527.93 on settlement of his estate and Mary R. Purdy $6,527.94.

I would allow them each $1,500.00, with interest at the rate of 5 per cent per annum from the date of their brother's death, November 25, 1923, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (3), and I find $1,500.00 fair compensation to Ella Maude Purdy, and $1,500.00 fair compensation to Mary R. Purdy, both with interest as above stated.

November 2, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1385

Re SAMUEL SMITH PATTERSON

Claimant is a British subject, born in Shelburne county, January 15, 1859, and for upwards of thirty years he has held a master mariner's certificate for sailing and steam-ships.

On July 1, 1914, he joined the steamer *Pandosia* at Hamburg, Germany, as first officer to bring the ship to England, where certain repairs were done. Prior to that he had been first officer on another Battle Line steamship the *Albuera* for two and one-half years.

The Germans held him on August 1, 1914, and on the 4th they arrested the *Pandosia* and her sister ship the *Trebia* and all on board. Claimant and the

steward were interned on the ship. On October 16, 1914, the Germans took complete charge of the ships and claimant and the steward of the *Pandosia* were removed to the prison hulks along with Captain Purdy of the *Trebia* and others. About three weeks afterwards they were taken to the prison camp at Ruhleben and there interned and they were not liberated until after the Armistice, November, 1918. Nautical instruments and other personal property, valued at $450.00 that claimant had with him on the ship were confiscated. He received £50 from the British Board of Trade towards replacing same. He claims for the loss of said personal property, for loss of wages at $100.00 a month for four and a half years, $650.00 paid for food in Germany and $2,000.00 for injury to health from being kept in cold damp quarters and given bad food. While interned he received mate's wages from the ship's owners the William Thomson Company of Saint John, N.B. His declaration of claim was made December 20, 1921.

The claim for loss of personal effects is covered by Article 297 (e) of the Treaty. Loss of wages during detention is covered by Paragraph 4, of the Annex to Section IV of Part X. These claims on behalf of Captain Patterson are now before the Mixed Arbitral Tribunal. This Commission does not allow for loss of wages. It would appear, therefore, that I need only consider the claim on account of injury to health. The medical report, under same date as the declaration of claim, December 20, 1921, records that claimant is "very nervous, trembling, very excitable, complete breakdown as far as health is concerned." Loss of health is attributed to "exposure to cold and dampness in a German prison camp for four years and a half; bad food and ventilation." Applicant totally incapacitated for three years and partially incapacitated for three years as a result and 100 is given as the percentage both in regard to his own occupation and in regard to employment in the general labour market, with life as the possible duration of such incapacitation. The claimant's own evidence is to the effect that he could do some work around his place after his return but could not do a good day's work. His condition has improved since the date of the medical report. At the time of the hearing before the late Commissioner in May, 1924, he felt fairly well. His nerves were not as good as they used to be, but, he said, of course at his age they would not be. He was over 55 at the time of his internment. He had not always been able to get employment as master but either as master or chief officer.

I would allow $1,000.00 for injury to health during internment and $1,300.00 solatium adopting the British scale in that respect.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find that $2,300.00 is fair compensation to the claimant with interest at 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, to the date of settlement.

JAMES FRIEL,
Commissioner.

November 11, 1926.

DECISION

Case 1386

Re JOHN E. ROOP

Claimant is a British subject, a native of Nova Scotia, born in Annapolis county, April 8, 1868. He is a duly qualified and certificated Master Mariner and on or about the 1st day of August, 1914, was in command of the British steamer *Frankdale* then lying in Hamburg, Germany, ready for sea, and bound for Pensacola, Florida, U.S.A. The war had just broken out and he was notified by the Harbour Authorities at Hamburg, not to proceed to sea, and that they

would not clear his ship. He was on board with his crew for about a month. They were then taken to the hulks and remained there about two weeks, and then he was taken to Ruhleben Camp and was detained there in confinement until November 23, 1918, when he was released and sent home.

By reason of his detention and imprisonment he was prevented from pursuing his calling as sea captain for the period of 52 months or thereabouts, and suffered a loss in earnings of at least $200 per month, making in all $10,400. He was also deprived of two chronometers of the value of $400 a sextant worth $75; binocular glasses worth $50; a telescope worth $50; leather suit case worth $25 and clothing and general effects worth about $350, all of which things were his own property. He makes the claim of $11,400 against the German Government as compensation for said losses. He says he had been receiving salary and bonus to the amount of $400 per month, and during his internment he received £20 or less than $100 per month and he claims for loss in wages, $200 per month. Personal effects and belongings to the value of $655 were confiscated according to the declaration made May 10, 1922 and filed with this Commission. In a previous declaration made May 9, 1920, claim was the same for loss of earnings and $1,000 for loss of personal effects. At the hearing it was stated that he received £100 from the Board of Trade towards expenses of re-fitting. Captain Roop has a claim with the Anglo-German Mixed Arbitral Tribunal amounting to $22,280 under Clause 4, of the Annex to Section IV, Part X, of the Treaty for loss of personal effects and wages during detention in Germany. The claim for loss of wages would be disallowed in any event by this Commission. Such claims were disallowed by the British Reparations Department and by the United States Mixed Claims Commission. The British Reparations Commission allowed solatium for internment and we have been doing the same. Beyond that Captain Roop would not be entitled to anything in respect to the two declarations filed by this Commission. At the hearing of this case in November, 1925, Claimant who appeared with counsel presented an increased claim for loss of personal effects, an increased claim for loss of wages and a new claim for injury to and loss of health, doctor's bills, nurses, medicine, etc. His declarations up to then made no claim for loss of health, nor for expenses incurred on account of sickness.

It appears from the evidence that claimant received the same treatment given other prisoners of war. It may be stated that Germany had a perfect right to intern subjects of her opponent countries found within her boundaries at the time war was declared, subject to humane treatment of such prisoners.

Captain Roop complains of the quarters provided and the food. These troubles no doubt arose in a great measure from necessity and were suffered by all the prisoners and no doubt to some extent by their captors. The food was pretty poor at Ruhleben but after the first year, claimant and others got food from England. He says that he kept fairly well until the latter part of his imprisonment, but after he got home it took him worse than he was during the war. He was sick in bed for six months and could not move hand or foot and it was not until January, 1921, that he was able to resume command of vessels. He developed sleeping sickness and his recovery was very slow. He spent about $1,000 in doctor's bills, nurses' fees and similar expenses.

The medical record discloses that when Captain Roop returned home early in December, 1918, he was very much debilitated and lacking in bodily vigour. He suffered from extreme weakness and lassitude and exhibited pronounced nervous symptons. Within a year or thirteen months after his return he developed Lethargic Encephalitis or sleeping sickness and from then on was continuously confined to his bed for months, necessitating constant medical attendance as well as the care of a trained nurse. The Doctor, Lewis J. Lovett, of Bear River states that as late as in October, 1924, claimant showed effects of serious illness and

that he (the Doctor) does not ever believe that claimant will ever recover his former physical vigour. The Doctor believes that the long period of internment and privation such as Captain Roop endured so undermined his health as to leave him in a condition susceptible to the disease. There were no cases of sleeping sickness in his part of the country at the time of Captain Roop's illness and he, the doctor, has never been able to satisfy himself as to the source of infection except that the germ of the disease was dormant in claimant's case and developed after a number of months.

I am very doubtful about maltreatment in the restricted sense being established. The Captain was a comparatively young man when he was imprisoned (46) and it may be that while he appeared all right special treatment should have been afforded him. There is no claim that it was asked for or denied. According to his own evidence there was nothing especially wrong with him during the internment.

Damages by "injury to life or health as a consequence of internment" are expressly included in the category referring to "Damage caused by Germany to civilian victims of acts of cruelty, violence or maltreatment." If, therefore, it is found that claimant's illness and injury to his health were in consequence of internment, his claim will be brought under the category, I am inclined to make that finding. I think the inference is reasonable and there seems to be nothing else to account for the illness that came on him a year or thirteen months after his returning home.

As to the ultimate injury to his health, I am not so satisfied as to its seriousness. Captain Roop has been in command of vessels since January, 1921, and is still a competent master of big ships carrying on over the five seas to the evident satisfaction of his employers.

I would allow him $2,500 on account of injury to health, to include expenses of doctors, nurses fees and similar expenses during the months he was ill, and $1,300 solatium for internment.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find that $3,800 is fair compensation to the claimant with interest at 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, to the date of settlement.

JAMES FRIEL,
Commissioner.

November 10, 1926.

DECISION

Case 1387

Re CHARLES BOISVERT

Claimant is a Canadian, born in Montreal in 1867. He shipped from the Port of Montreal, on the ss. *Mount Temple*, November 6, 1916. The ship was torpedoed and sunk by the German Raider *Moewe*, on December 6, 1916, and the crew taken prisoners and eventually interned in the Brandenberg Prison Camp. His health was good during his internment. He was compelled to work and was quite willing to do everything his captors told him and they did not bother him and his willingness to work helped him. He was working on railroad work.

He claims for loss of wages that he might have earned had he not been interned and on account of personal effects to the value of $30.00. The British Board of Trade usually made an allowance in the case of a kit, but the record in this case is silent on this point.

The loss of wages cannot be allowed; claimant was entitled to a solatium for internment and I think that $1,050 will be fair allowance to include the effects.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, categories (2) and (9), and I find that $1,050.00 is fair compensation to the claimant with interest thereon at the rate of 5 per cent per annum from the date of the ratification of the Treaty to the date of settlement.

JAMES FRIEL,
Commissioner.

December 2, 1926.

DECISION

Case 1388

Re JOHN STANLEY MORGAN

Claimant is a Canadian, born in Montreal in 1896. Not being able to pass military requirements he shipped as a sailor from Montreal on the ss. *Mount Temple* November 6, 1916, and was taken prisoner with the rest of the crew when that ship was sunk off Brest by the German Raider *Moewe* December 6, 1916. They were handed over to the military and naval authorities interned in various prison camps and eventually placed in the Brandenburg Internment Camp. Complainant was forced to work on railway work, in factories, on construction work, digging and building and as a labourer about munition factories. The record does not state how long claimant worked. The rations were scant and poor and the treatment rough. On one occasion claimant defending himself from ill-treatment by a guard received a bayonet thrust in the scuffle. The Red Cross sent parcels as soon as they found out where the prisoners were.

He claims for loss of personal effects and loss of wages that he might have earned had he not been interned and for loss of wages after his return to Canada owing to his having to go to a sanitorium and hospital for four months for treatment on account of chronic bronchitis and laryngitis which he says he contracted owing to treatment received in the prison camps and lack of proper nourishment while there. There is no medical report or testimony in the record. At the time of the hearing of this case before the late Commissioner at Montreal in June 1923, claimant was employed as a miner in Porcupine and was earning sixty cents an hour as a driller.

Claimant received $210.00 war risk insurance from the British Board of Trade and some small amounts of money while in England.

I would allow claimant $1.500 compensation for internment and loss of health, forced labour and loss of effects, with interest at 5 per cent from the date of the Treaty.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (2) and I find $1,500.00 fair compensation to the claimant with interest thereon at the rate of 5 per cent per annum from the date of the ratification of the Treaty (January 10, 1920) to date of settlement.

JAMES FRIEL,
Commissioner.

December 2, 1926.

DECISION

Case 1389

Re BERNARD SWEENEY

Claimant is a British subject, born in Ireland in 1864 and came to Canada in 1903. He shipped from the Port of Montreal on November 6, 1916, as horseman, on the ss. *Mount Temple* which was torpedoed and sunk by the German Raider *Moewe* on December 6, 1916. Claimant was interned in Brandenberg Prison Camp. He did not have to work at hard work, as con-

sideration was given the older men rather than the younger men. The Canadian Red Cross supplied them with food. The British Board of Trade paid for his lost kit.

I would allow claimant the amount of his claim $1,050.00 which is about the usual solatium allowed for internment in the camp mentioned.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (2), and I find that $1,050.00 is fair compensation to the claimant with interest thereon at the rate of 5 per cent per annum from the date of the ratification of the Treaty to the date of settlement.

JAMES FRIEL,
Commissioner.

December 2, 1926.

DECISION

Case 1390

Re ALEXANDER DOUGLAS

Claimant is a British subject born in Scotland, in 1879, who came to Canada in 1902. When the war broke out, he joined the 13th Battalion. He was wounded and gassed at the 2nd Battle of Ypres, and taken prisoner. His treatment by his captors while he was a prisoner for three years and six months, seems to have been outrageously severe.

In consequence of his refusal to work in a munition factory, he was placed before a hot furnace until he collapsed twenty minutes after. He was badly burned about the body and face and still suffers from the effects. He was temporarily blinded.

At the time his case was heard before the late Commissioner June 12, 1923, he was in the hospital. His statements about his treatment were verified from the Military Department after full inquiries had been made. At the time of the hearing he was suffering from spinal disease and from an open wound which were directly attributed to the cruel treatment he received.

The late Commissioner and the Deputy Commissioner were very much impressed by this man's case. It is a very strong one with the exception of the Medical Report from the Department of Soldiers' Civil Re-establishment dated December 29, 1921, in which claimant's disability is given at 20 per cent permanent, by reason of which he receives a pension of $15.00 per month.

I would allow claimant $6,000.00 for mal-treatment.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (4) and I find $6,000.00 fair compensation to the claimant, with interest at the rate of 5 per cent per annum from the 10th day of January 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

December 10, 1926.

DECISION

Case 1391

Re HAROLD MCILWAIN

Claimant is a Canadian. He was a musician, who, in January, 1915, went to Germany to become, as he says, a really first class violinist. When the war broke out, he was in Dresden, Saxony. For some trivial thing which happened in the street, he was arrested and imprisoned for three weeks. At the end of three weeks he was permitted to go to Freidburg, Saxony, and to live there, freely, reporting to the police. He was there until January 20, 1915, when he was taken back to Dresden prison where was was confined until February 8, 1915. From there he was taken to Ruhleben Camp and interned until the

end of the war. He has the usual complaint about the food and treatment. After six months parcels and money came from his father who claims to have spent over $3,000.00 in this way. Claim is made for this expenditure and for the amount of claimant's expenses and tuition fees paid out before he was interned and for the amount which he might have earned had he been able to pursue his studies. He was 26 years of age when interned. When he got back to Canada after the Armistice he was in very poor health. He had been compelled to work and the internment had taken a serious effect on him but there is no medical report or proof from any physician. Claimant married after returning home and at the time of the hearing before the late Commissioner in May, 1924, he had two children. His father apparently was a man of means.

As already many times stated, claims for wages during internment are not covered by the terms of Annex (I) to the Reparation Clause of the Treaty of Peace.

Claimant so far as the record goes, was not making any wages, therefore, his claim for loss of four years time $10,000.00 is in a much worse position than many of the others which have been disallowed.

Category (2) which deals with claims in respect of internment provides only for damages caused by acts of cruelty, violence, or maltreatment (including injuries to life or health as a consequence of internment). The Annex is framed (so reads the British opinion) on the footing, as it had to be, that a belligerent has a right to intern nationals of his opponents when found in his own or in occupied territory, subject to giving proper treatment. Accordingly, unless there is improper treatment, no wrong is done in respect of which damage can be claimed. Where a civilian has suffered personal injury or impairment of health due to acts of cruelty or violence so that his capacity to work has been diminished, loss of wages due to such incapacity is admissible (subject to proof by medical evidence) as part of the measure of damage suffered. There is no medical evidence in this case. I will infer though, from the evidence of the young man and his father, that his health for a time was impaired. There is some not very satisfactory evidence of his having been compelled during internment, to work without remuneration.

The British Reparation Commission allowed solatium to internees and a scale was fixed for each individual camp including Ruhleben Camp which was mentioned as being one of the camps more sanitary and possessing more amenities than others and in which many of the higher social standing were interned. The British Government took the view that the hardships inflicted on such persons were less severe than on persons interned in less favoured localities.

I think it will be fair to deal with this case in the way that the British Reparation Commission dealt with similar cases. They did not allow anything for parcels, food or clothing sent by friends or relatives.

It must not be overlooked in claims of this nature that many of the internees were of military age and if they had been free, they would have been subject to military service, voluntarily or involuntarily, with the attending hardships and dangers.

I would allow this claim at $4,000.00 to cover solatium, injury to health and for forced labour, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (2) and I find $4,000.00 fair compensation to the claimant, with interest as above indicated.

JAMES FRIEL,
Commissioner.

December 13, 1926.

DECISION

Case 1392

Re JEAN TRANCLE-ARMAND

This claim was heard by the late Commissioner at Montreal in June, 1923. The facts are admirably stated and his conclusions and opinion in a decision signed by him, which is as follows:—

Dr. Pugsley's Judgment.

This claimant was born in Alsace, but became a naturalized British subject in Canada in the year 1894, having been in Canada since May, 1884, making him a resident of this country for about 30 years. The claim is in respect of losses sustained, and injury to his health by reason of his having been interned and made a prisoner in Germany during the war. He was held a prisoner from the 1st August, 1914, to August 6, 1915. He was 54 years of age at that time, being over the age when he could have done military service. The claim is large and comprises various items which are set out as follows:—

1. Complete loss of business	$ 50,000 00
2. Injury to health	20,000 00
3. Loss of property in Canada, by reason of his absence.	34,243 00

This amount is made up of the following items:—

1. (*a*) Lots and buildings in the Town of Elk Lake, Ont	$ 2,500 00
(*b*) Loss of rental at $120.00 per month for 9 years.	12,960 00
2. Two lots purchased from the Ontario Government which he was obliged to let go for taxes	500 00
3. Loan on New York Insurance Policy	1,836 00
4. Loss of policy	3,000 00
5. Loss of policy, I.O.O.F.	1,000 00
6. Loan on New York Life Policy	393 00
Interest for 8 years	157 00
7. Loan on New York Life policy	425 00
8. Loan on Canada Life Insurance, plus interest	640 00
9. Mortgage on 2 buildings lots in Toronto, with interest for four years	660 00
10. Sale of these lots at a sacrifice, involving a loss	500 00
11. Sale of Montreal residence at sacrifice loss	5,100 00
12. Moneys received from Canadian Government while in Germany and reparation expenses	550 00
Total	$ 34,243 00

There is also a claim filed for his expenses occasioned by his trip to France in 1914, amounting to $2,255.00. The claimant had also filed a further claim for loss of probable commissions for $110,000 on deals which he alleged he would have likely put through in France but for his internment and imprisonment by the German authorities. After some discussion his counsel abandoned the claim for the commissions and limited it to the expenses mentioned above ($2,255.00).

At the sittings at Montreal, June 13, 1923, Mr. Armand gave lengthy evidence, covering some 43 pages, and dealt with the various aspects of the claim above outlined. The facts are these:—

Mr. Armand was a successful broker, and went to France in the summer of 1914, to interest certain capital in a project for the operation of a phosphate

mica deposit, owned by the Progressive Mining Company, of Ottawa. In Paris he organized a syndicate to take over 200,000 shares of this mining stock at $1.00 per share, from which he would have received 10 per cent commission. He was also interested in a project of organizing a pulp company and some coal mining concerns. His negotiations, he said, were really completed on July 23, 1914, and he expected to effect a satisfactory conclusion of his business during the first week in August.

Having about 10 days at his disposal he decided to visit his native Province of Alsace, and while there crossed the frontier into Germany for the purpose of studying their methods of producing fertilizer. He was in the Black Forest in Germany when the war broke out, and was taken to a small town and refused permission to leave because he was a British subject.

He was without money, because several cheques in his pocket were useless, but through the assistance of the United States Ambassador he succeeded in getting certain moneys advanced to him from the Canadian Government for expenses. He was allowed to remain in a hotel for some time, but had to report twice daily to the German authorities. He was observed making notes in his diary, and was arrested and sent to jail for about a month.

He was not allowed to write letters home, and tried to send a post card with the assistance of an American lady in the town. She refused to help in this way, for fear of being shot, and these attempts led to his arrest. He described his terror, because of an apparent threatened execution when he was obliged to arise at six in the morning, and expected to be shot. He was, however, taken to Berlin and finally landed in Ruhleben Internment Camp, which was a race-track. He and many other prisoners were quartered in the stables, and he gave a detailed description of the living conditions, bad food and so forth. He was finally exchanged in 1915 and succeeded in returning to Canada. He was 54 years of age at the time of his internment and claims that he should have been immediately released as he was a civilian, over the age when he could have been used for military service. His health was very greatly impaired as a result of his imprisonment, maltreatment, poor food, etc.

Upon his return to Montreal, he discovered that his business was totally destroyed, the Government of Quebec having appointed a curator who liquidated everything. This was necessary, because by reason of the Quebec law, his wife had no authority to carry on in his absence, and it was necessary that these steps be taken. He produced evidence from his books to show that his average income for several years prior to his internment, was over $10,000 and it is therefore in respect of this loss for over the period of five years, that he claims $50,000.00. In corroboration of this two witnesses appeared at the sittings, namely Edward G. Parker and Pierre Desforges, who swore that they had known the claimant for about 20 years, and that he was a prosperous and successful broker, owning considerable property. They thought that his income would certainly be in the neighbourhood of $10,000.00 per year. They corroborate the evidence as to the loss of his business, and of his having had to start all over again. Both of these men also testified that they were greatly shocked at his appearance upon his return, and stated that he was in excellent health prior to 1914.

His impaired health as a result of his imprisonment was also certified to by a physician in Montreal. Owing to poor health he was unable to carry on business for a long time, and was confined to bed, both at home and at Notre Dame Hospital, Montreal, for several months, during the year 1916.

In 1917 he borrowed a little capital and started business as a typewriting agency. He had hardly commenced this when a judgment which had been secured against him, by a Trust Company from whom he had bought property in 1912, and for which he had been unable to make payment was put into effect, and the bailiff seized his premises and all his office furniture. The proceeds of the sale

of this were not sufficient to satisfy the judgment and considerable of his household furniture was also seized and sold. Because of his injury to his health and his inability to give attention to his affairs immediately after his return to Canada he claims $20,000.00. He stated that he bought property at Elk Lake, Ontario, for $2,500 00 in the year 1909, and built 2 houses on these lots at a cost of $7,000.00. He later built a small store between two of the houses which cost $500.00. The rent from these three buildings came to about $120.00 a month. When the war broke out the tenants left, and by reason of his absence, he was unable to look after the property, and after his return he had neither the health nor the means to keep them in a proper state of repair, so that they became a total loss. The claim in respect to this is for $7,500.00 and loss of rentals for 9 years amounting to $12,960.00.

With reference to the claims for losses through the cancellation of his insurance policies, and the loans thereon, it would seem that he is claiming for the amount loaned and for the loss of the policies, although taking these losses into consideration, he really received the full value of the insurance at this time. These loans were secured for his wife and children during his absence, in order to supply them with the necessaries of life. The witness maintains that had he not suffered his internment, he would have been able to carry on the full amounts of this insurance, and have been able to take care of his family out of his yearly income, and that the whole transaction resulted in his losing his insurance.

With reference to item No. 10, he swears that he was hard pressed for money, and had to sell two building lots in Toronto for the sum of $1,250.00. The lots would have had a value of $1,750.00 so that he suffered a loss here of $500.00 due to the straitened circumstances. With regard to item No. 11, he swears that in March 1923, being again pressed for money, he was obliged to sell his 12-roomed house at Ahuntsic for the sum of $7,400.00. This property was worth at least $12,500.00 so that he suffered a loss here of $5,100.00.

As to item 12, dealing with money ($400.00) received from the Canadian Government, while he was in Germany, he stated that a claim was made by the Government for a refund, but having written to Sir Robert Borden at that time he was given to understand that he need not trouble himself very much over this item.

The item of expenses is made up as follows:—

Steamer passenger and expenses	$ 150 00
Travelling outfit	125 00
Railway expenses in France and Germany	175 00
Hotel expenses	615 00
His time for one and one-half months	1,250 00
Total	$2,255 00

While there is no doubt that owing to the detention and imprisonment of the claimant his business suffered greatly, it is impossible to say that all the losses were the direct consequence of such imprisonment. The two largest items are lots and buildings at Elk Lake, Ontario—$2,500 and loss of rental for nine years at $120.00 per month. The evidence showed that as a result of the breaking out of the war the tenants left and the properties became unoccupied. As to the item of $5,100 for loss on sale of Montreal property, the evidence does not satisfy me that this was a damage directly resulting from the claimant's imprisonment. Neither do I think that any of the other items comprising the $34,243 can be so regarded; nor can the claimant's expenses to France be allowed. They were incurred prior to the claimant's imprisonment, and would probably have been a loss anyway, owing to the breaking out of the war.

I come then to the remaining items of the claim:—

No. 1. Complete loss of business..	$50,000 00
No. 2. Injury to health..	20 000 00

The breaking up of the claimant's business was undoubtedly the direct result of his imprisonment.

I do not think, however, that I can properly allow for this, the amount claimed. Mr. Armand was only compelled to be absent from his business about one year, and as his profits averaged about $10,000 per year, I think that if I allow him $15,000.00 this would be sufficient compensation and would cover his direct loss as a result of his imprisonment. It may well be that the nature of his business was such that war conditions prevented his successful resumption of it.

In addition to this I allow for the injury to his health by his imprisonment, maltreatment and exposure $10,000.00. His imprisonment and cruel treatment being without any apparent reason, treated as a spy and put in fear of being shot, seem wholly without excuse.

I therefore allow the claim at $25,000.00 and I would recommend that interest at the rate of 5 per cent per annum be allowed from the date of the ratification of the Treaty of Peace (January 10, 1920) to the date of settlement.

W. PUGSLEY,
Commissioner.

I have been asked to consider the case and give my opinion.

The duty of this Commission is to report on all claims which may be submitted to it for the purpose of determining whether they fall within the First Annex to Section (I) Part VIII of the Treaty of Peace with Germany. This claim falls under Category 2, covering compensation to be claimed in respect of

"Damage caused by Germany or her allies to civilian victims of acts of cruelty, violence or maltreatment (including injuries to life or health as a consequence of imprisonment, deportation, internment or evacuation, of exposure at sea or of being forced to labour), wherever arising, and to the surviving dependents of such victims."

The question is as to what are proper elements of such damage. I do not think that damages can be allowed for loss of business. The clause that attaches to injury to life or health as a consequence of imprisonment . . . internment . . . means direct physical injury only. The report of the British authorities in submitting the British Reparations Account to the Reparations Commission recites that—

"In calculating the amount of damage in each case only damage caused by specific acts of Germany and her allies, or damage directly in consequence of specific hostilities or specific operations of war, has been included and indirect and consequential damage has been excluded. . . ."

". . . Compensation amounting to a very large sum has also been claimed in respect to loss of earnings or business profits owing to the claimants being kept in internment, or, in the case of seafarers, in respect of loss of wages or salary during the time they were unemployed owing to their ship having been torpedoed, and these elements of claim have also been disregarded as being indirect or consequential damage."

In connection with the item in the British account for damages "by air raid or bombardment from the sea" this explanation is made:—

". . . All cases of indirect and consequential damage have been rejected as well as those cases in which there is no clear evidence that damage was due to an act of aggression by the enemy. . . ."

". . . Claims in respect of loss of business, profits, good-will and other consequential damage of a like nature have been excluded. . . ."

The Mixed Claims Commission of the United States decided that save in certain excepted cases (of which this would not be one) Germany is not obligated

under the Treaty of Berlin to make compensation for the loss of American nationals of prospective personal earnings, as such. The Treaty of Berlin reads the same as the Treaty of Versailles in respect to this category.

The British Royal Commission on Compensation for Suffering and Damage by Enemy Action (Lord Sumner, Chairman) in their first report say:—

"23. Again the Commission have felt bound to apply legal rules as to remoteness of damage and particularly to disallow losses which arise only from the existence of a state of war, where the liability to loss is common to all Your Majesty's subjects though in the particular case it may have fallen more heavily on the claimant than others."

In Article 231 of the Treaty Germany accepts responsibility of herself and her Allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals were subject to as a consequence of the war. By Article 232 those Governments recognized that the resources of Germany are inadequate to make complete reparations for all such loss and damage. Germany was required, however, and undertook to make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of belligerency of each as an Allied or Associated Power, against Germany by such aggression by land, by sea and from the air and in general all damage as defined in Annex I to Part VIII. These Articles make it clear that by Treaty requirements, the fact that Germany's resources were inadequate to make reparation for all of the losses and damages sustained by the Nationals of the Allied and Associated Governments as a consequence of the war and that Germany's reparation obligations were expressly limited to such as are enumerated or defined in Annex I.

Lord Sumner's Commission dealing with the case of a claimant who was in Germany at the outbreak of the war and was arrested and interned until the end thereby losing wages that he had a reasonable expectation of earning had he been a free man during that period, directed the British Reparation Claims Department that there was no provision for such loss in Annex I; that category 2, which deals with claims in respect to internment provides only for damage caused by acts of cruelty, violence or maltreatment (including injuries to life or health as a consequence of internment).

The Annex is framed on the footing, as it had to be, that a belligerent has a right to intern nationals of his opponents when found in his own or in occupied territory, subject to giving proper treatment. Accordingly, unless there is improper treatment, no wrong is done in respect of which damage can be claimed.

Attention having been called to the final words of category 9, as it had been contended by some of the claimants that such loss is damage directly in consequence of hostilities or an operation of war, the Commission was of the opinion that the last words of paragraph 9 must be read with the whole paragraph as referring to property.

The Commission was also of opinion from the evidence submitted to them that in all civilian internment camps in Germany and other enemy countries a certain amount of unnecessary hardship was experienced by internees amounting in the opinion of the Commission to maltreatment within the meaning of Annex I, so as to entitle all internees to some compensation, even though no definite personal injury or injury to health had resulted.

A solatium in addition to actual damage sustained by the claimant was allowed on a scale. The allowance for the first year at Ruhleben was £75.

In assessing damages under category 2, the British Reparation Claims Department under opinion ruled that where a civilian has suffered personal injury or impairment of health due to acts of cruelty, violence or maltreatment by the enemy so that his capacity to work has been diminished, loss of wages due to such incapacity is admissable (subject to proof by medical evidence) as part of the measure of the damage suffered.

We may take this ruling for guidance in assessing damages for injury to health in this case. There can be little doubt that claimant's health was so injured, as a consequence of imprisonment and internment that he could not properly attend to business for a long time after his return to Canada.

I would approve of the allowance made by Dr. Pugsley under that heading.

I think that the decision in respect to items disallowed is correct. The claimant would be entitled under the British ruling to solatium for internment and on account of illness which may be considered as taken care of by the monies received by him from the Canadian Government, while he was in Germany.

The claim as I have said before, comes under category (2), of Annex I, and I find $10,000 fair compensation to the claimant with interest thereon at the rate of 5 per cent per annum from the date of the ratification of the Treaty, (January 10, 1920) to date of settlement.

JAMES FRIEL,
Commissioner.

January 15, 1927.

DECISION

Case 1393

Re HUGH F. YOUNG AND THE COPP CLARK COMPANY, LIMITED

Claminant is a Canadian corporation. One of their employees Hugh F. Young was in Nuremburg, Bavaria for them on business on the 31st July, 1914, and was unable to leave that city. On August 4 he was detained by the authorities and not permitted to leave the city limits. On August 23 he was arrested and put in jail in solitary confinement and kept there until about October 1, 1914. He was then allowed out on bail furnished by a friend in Nuremburg, but not permitted to leave the city. On February 6, 1915, he was sent to Ruhleben and was kept there until Novembery 22, 1918. During all this time he was paid his salary and also sent money from time to time to buy food and other necessaries of life.

They claim $7,728.00 for Mr. Young's salary paid him and deposited in the bank and for $900.00 money sent Mr. Young at different times.

This claim was before the late Commissioner at Toronto in May, 1924, who decided that the claim was not admissible. There was no injury done to claimant that would come under any of the categories of the Annex.

In dismissing the claim the Commissioner said he would hear a claim from Mr. H. F. Young himself and Mr. Young was examined and later the Commissioner gave a judgment allowing Mr. Young the amount of salary which he would have earned but for his detention and imprisonment fixed at $7,728.00 and for the amount of remittances, namely $900.00, making $8,628.00 which on Mr. Young's order was to be paid to Messrs. Copp, Clark & Co., Limited.

For injury to health during imprisonment he allowed Mr. Young $4,000.00.

The claim of Messrs. Copp Clark & Co. Limited is hereby disallowed, as not coming within any of categories to Annex (I) Part VIII of the Treaty of Versailles.

Dealing with the claim of Hugh F. Young. This is one of the judgments of the late Commissioner which I have been asked to review.

The case was one of ordinary internment. These cases have been dealt with by this Commission, under the opinions and directions of the British Reparations Commission on Compensation of which Lord Sumner was Chairman to the British Reparation Claims Department. The Mixed Claims Commission followed the same rules. Under these rules loss of prospective earnings is not a matter for compensation under the reparation part of the treaty. Internment

is not illegal. A belligerent has a right to intern nationals of his opponents when found in his own or in occupied territory. Subject to giving proper treatment, Mr. Young states that he was held up by the German authorities 3 or 4 days before war was declared and had to report to the police for a couple of weeks but was allowed to stay in his hotel. After a few weeks he was seized and sent to prison where he was kept in solitary confinement for 4 or 5 weeks when he was released on bail put up by some business connections in Nuremburg. He was allowed out on bail for a few weeks, but he had to report to the police twice a day, and about the 1st February, 1915, he was seized and sent to Ruhleben, a concentration camp near Berlin, where he remained until the 22nd of November, 1918, 11 days after the Armistice. As to the internment at Ruhleben, he says he cannot "claim maltreatment as far as personal violence was concerned, or anything of that kind; we were not treated at all, that is the way it might be put. After the first year or so we were put on a food allowance of a kind, but the last couple of years we depended entirely upon parcels sent us from home and from the Red Cross." His health was very much lowered and impaired, and he came home pretty much of a wreck. There was nothing organically wrong really, but his nerves were all shot, his digestion was very much gone and he was very much under weight.

He thinks he ought to claim something for impairment to his health. He says that while he has regained his health to a certain extent, it has left its mark. He has not the staying power or the resistance he had before. He cannot indulge in sports the way he used to. He had been in good health simply because he had taken care of himself.

The English authorities go on to state "that where a civilian has suffered personal injury or impairment of health due to acts of cruelty, violence of maltreatment by the enemy so that his capacity to work has been diminished, loss of wages due to such incapacity is admissable (subject to proof by medical evidence) as part of the damage suffered."

There is no proof in this case and really no claim in respect to personal injury.

The English Commission was of opinion from the evidence submitted to them that in all civilian internment camps in Germany and other enemy countries a certain amount of unnecessary hardship was experienced by internees amounting in the opinion of the Commission to maltreatment within the meaning of Annex I, so as to entitle all internees to some compensation even though no definite personal injury or injury to health had resulted.

The scale of solatium for internment in the different camps was established and that scale has been adapted to Canadian cases.

The cost of presents of food and clothing sent to civilians in internment camps was regarded as being outside the provisions of the Treaty as to reparations.

Mr. Young is entitled to solatium for internment and I would allow the amount of $1,200. While he has not proved injury to health he has made a fair statement as to what happened to him, and I think I would allow $1,000 for injury to health.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, categary (2), and I find $2,200 fair compensation to the claimant with interest thereon at the rate of 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, to date of settlement.

JAMES FRIEL,
Commissioner.

January 12, 1920.

DECISION

Case 1394

Re DR. ALLAN G. LOCHEAD

Claimant is a Canadian, born in Galt, Ontario, June 21, 1890. He is a graduate of McGill University; when the war broke out he was in Germany, having just completed a course in agricultural bacteriology at Leipzig University which entitled him to the degree of Ph.D. He, with others, was arrested at Hanover, August 4, 1914, and was kept in military prison until about the end of September. They were then taken to Ruhleben Prison Camp on November 14, and remained there until November 18, 1918.

Dr. Lochead claims for loss of four years through imprisonment, resulting in inability to pursue his profession, $10,000; loss of hearing, partial, $2,500.

The claim was heard by the late Commissioner at Ottawa in June, 1924, who allowed it in full.

The British Royal Commission under the chairmanship of Lord Sumner adopted the opinion that claims for loss of wages during internment were inadmissible. Category (2), which deals with claims with respect to internment, provides for damage, by acts of cruelty, maltreatment (including injuries to life or health as a consequence of internment). The Annex is framed on the footing as it had to be, that a belligerent has a right to intern nationals of his opponents when found in his own or occupied territory, subject to proper treatment.

Accordingly, unless there is improper treatment no wrong is done in which respect damage cannot be claimed.

Dr. Lochead claims for injury to his hearing due to dampness and cold of the camp. The medical record discloses a 15 per cent disability for deafness. Proper treatment was not given his ear. He complains of conditions at Ruhleben Camp where there were 5,000 internees. The records of our cases, English cases and American cases indicate very different views of the treatment received. Many of those interned say there was as good treatment, accommodation and food as could be expected under the circumstances. The British Reparations Department took the view that it was a favoured camp, and so considered it in the scale of solatium fixed by them for internment in the different camps.

I would not dispute the allowance to Dr. Lochead for injury to his ear $2,500, but his claim for loss of salary which he might have earned under the ruling referred to cannot be allowed. He is entitled to solatium for internment which I would allow at $1,200.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find $3,700 fair compensation to the claimant with interest at 5 per cent per annum from the date of the ratification of the Treaty January 10, 1920, to date of settlement.

January 12, 1927.

JAMES FRIEL,
Commissioner.

DECISION

Case 1395

Re ERNEST C. MACMILLAN

Claimant is a Canadian born in Ontario in 1883. He claims for detention in Germany during the entire period of the war, being imprisoned in Nuremburg and Ruhleben camps. He bases his claim on loss of salary $2,400.00 and cost of food supplies from home, $600.00.

Claimant had gone to Germany for the purpose of hearing a musical festival and was studying music abroad. He was arrested in January 1915 and released in November, 1918. He was in prison for nine months at Nuremburg and the balance of the time in Ruhleben camp. He does not think he suffered any permanent injury to his health as a result of his experience.

This case was heard by the late Commissioner who allowed the claim at the amount declared.

With some regret (claimant being one of the few who did not claim for personal injury on account of internment) I cannot agree. We are following the rulings of the British Royal Commission established to make recommendations as to ex gratia grants to sufferers from enemy action. They granted a solatium to internees not because of internment (it is in itself legitimate), but owing to special hardships or sickness suffered, as a result of imprisonment. The solatium was the same to all classes and each individual camp but some difference was made in respect to the circumstances prevailing. Ruhleben was considered a favourable locality.

The British Government do not consider that loss of wages during internment is covered by the terms of Annex (I), Reparation clause, of the Treaty of Peace. Where a civilian has suffered personal injury or impairment to health due to acts of cruelty, violence or mal-treatment by the enemy, so that his capacity to work has been diminished, loss of wages due to such incapacity, is admissible (subject to proof by medical evidence) as part of the measure of damage suffered.

Cost of parcels of food and clothing sent to civilians in internment camps is likewise regarded as being outside the Treaty as to reparations.

The British Commission was also of the opinion, from the evidence submitted to them, that in all civilian internment camps in Germany and other enemy countries, a certain amount of unnecessary hardships were experienced by internees, amounting in the opinion of the Commission to mal-treatment within the meaning of Annex (I), so as to entitle internees to some compensation, even though no definite personal injury or injury to health had resulted.

The British Reparation Claims Department established a scale of compensation for internment and I would adapt it to this case. The claimant is entitled to solatium for 3 years 10 months internment, say $1,100.00, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find $1,100.00 fair compensation to the claimant, with interest as above indicated.

JAMES FRIEL,
Commissioner.

January 11, 1927.

DECISION

Case 1396

Re ABRAHAM RUCKENSTEIN

Claimant was born in Roumania, February 13, 1884. He came to Canada in 1905, and resided and carried on business at Edmundston, New Brunswick, until 1910, then he moved to Montreal. He became naturalized as a British subject in Canada in the Madawaska County Court November 17, 1908.

In his declaration he states his claim as follows:—

"Before the breaking out of the recent German war I was unwell, with rheumatism, and in the month of May, 1914, I went by the advice of my doctor, Mr. J. Booth, of Montreal, to Europe, for the benefit of my health and I was resident in a hospital at Frankfurt on Maine in Germany from May until the middle of June, 1914, when I removed

to Bad Nauheim, where I was when the recent German war broke out, whereupon I was placed under orders by the officers of the German Government not to leave Bad Nauheim, where I remained for a period of 116 days (namely from the 1st of August until the 24th November, 1914), then I was allowed to go to Giesen where I remained for a period of 78 days (namely, from the 25th day of November, 1914, until the 10th day of February, 1915), then I was taken to Ruhleben, by the military, and I was interned there for a period of 78 days (namely, from the 10th of February until the 29th of April, 1915), then I was sick and was removed to Bad Nauheim (a second time), where I remained for a period of 211 days (namely, from the 29th of April to the 26th of November, 1915), and then I went to Charlottenburg where I remained for a period of 11 days from the 26th of November to the 6th of December, 1915."

"While I was at Bad Nauheim from the 1st of August to the 24th of November, 1914, I lived at the Promenaden Hotel at a total expense, paid by me for 116 days I was there, of 2,085 marks (equivalent to $541.25), namely, ten marks per day for hotel expenses, and eight marks per day for other expenses; while I was at Giesen, from the 24th of November to the 10th of February, 1915, I lived and was medically attended at the Medical University Clinic, at a total expense, paid by me, for the 78 days I was there, of 2,028 marks (equal to $507.00), namely, 14 marks per day for room and board, and 12 marks per day for doctors' bills; while I was in internment at Ruhleben, from the 10th of February to the 29th of April, 1915, I was at the Lazaret, a plain house near the camp, where I had no expense to pay board and lodging, but I suffered there very much in health on account of the bad conditions, the room in which I was detained being occupied by never less than 15 people and sometimes by 20 and 25 people, while I was for a second time at Bad Neuheim, from the 29th of April to the 26th of November, 1915, I lived again at the Promenaden Hotel, at a total expense paid by me for the 211 days there of 3,798 marks (equivalent to $949.50), namely, 10 marks per day for hotel expenses and 8 marks per day for other expenses, and while I was at Charlottenburg, from the 26th of November to the 6th of December, 1915, I was at the Sanatorium there under the care of Doctor Weiler at a total expense paid by me for the eleven days I was there, of 165 marks (equivalent to $41.25), namely, eleven marks per day for Sanatorium expenses and four marks per day for other expenses."

"During all the time (over 16 months) I was held in Germany as aforesaid I made repeated application to be released, so as to be removed to a warm climate, the German doctor having certified that the state of my health was such that I must not remain any longer in Germany and I sent certificates to this effect from three German doctors to the High Commando at Berlin, but no notice was taken of my applications for release and I was detained in Germany, as aforesaid to the ruination of my health, which was seriously injured and is still in a very bad state. I also sent German doctors' certificates to the American Ambassador Gerard stating my case to him, but I only finally obtained my release on the 6th day of December, 1915.

"On the 26th day of November, 1915, I received a telegram informing me that I would get a passport at Charlottenburg to leave for Canada. I went there accordingly and got the passport, and then I had to go to Berlin and get the passport signed by the American Ambassador. When passing the German frontier the German officials took from me 170 marks, leaving me the remainder of my German money, namely, 200 marks, and at Bad Nauheim I had to give up my gold watch (worth $60.00) as the German Government would not allow gold to leave the country. I also had to leave all receipts, doctors bills, etc., as the German Government would not allow them to go out of the country."

"In conclusion I beg leave to claim the following as damages sustained by me, through being forcibly detained in Germany, namely:—

"Loss of business profits during 16 months forcibly detained in Germany.	$12,000 00
"Damages to my health..	20,000 00
"Amount paid (as herein before detailed) for hotel and other expenses and doctors' bills 8,489 marks, equal to..	2,122 25
"German money confiscated at the German frontier, 170 marks, equal to..	42 50
"Value of gold watch confiscated..	60 00
"Total amount of claim..	$34,224 75"

(The watch was returned).

This claim was heard before the late Commissioner at Montreal in June 1923. Medical testimony was given by two doctors. Dr. Campbell B. Keenan had examined claimant in 1913, who then had pains in his joints, rheumatism, his heart was not affected. Shortly before the hearing he examined the patient again and found that he had a serious heart lesion.

Dr. Andrew A. Robertson had had claimant under his care in the Montreal General Hospital in August 1921, suffering from rheumatic inflammation of the

wrists. At that time the patient had also heart disease, which might have been due to various causes. Eliminating some of them, the result of the examination showed it was due to some rheumatic infection from which he was suffering at the time. Asked if internment in a camp where the hygienic conditions were adverse and subject was exposed to cold and unclean surroundings, whether that would bring on the heart disease of which he complained, the doctor answered "that it would be likely to bring on the infection to which this local heart disease would be secondary." Claimant has a very serious lesion of the aortic valve of the heart which will cause his death in a comparatively short time.

The Commissioner in giving judgment said "that it was by no means clear that claimant's condition was brought about by the treatment which he received in Germany." He recommended, however, an allowance of $5,000.00 on the claim for damages to health, and $500.00 for medical expenses. For loss of services in business, 16 months, he allowed $6,000.00. I do not agree with this judgment. Claimant's internment, as has already been said in several cases, was perfectly permissible subject to proper treatment.

The Germans seem to have given him very good treatment, with the exception of the internment at Ruhleben, and that was in a house outside of the camp. There is nothing under the ruling of the British Royal Commission on Reparations for which he could maintain a claim. That Commission allowed a stated solatium for internment, the amount being $375.00 for the first year at Ruhleben and $250.00 for each subsequent year. They allowed a maximum compensation of $125.00 for illness during internment.

As to his claim for injury to health, it says he went to Germany for treatment. He had no health when he went there, and he was apparently given every chance to live at sanitoriums and at hotels and to take treatment as though he had not been a prisoner of war.

The claim for loss of services in business cannot be allowed. Category (2) which deals with claims with respect to internment provides only for damage caused by acts of cruelty, violence or mal-treatment (including injury to life or health as a consequence to internment). Unless there is improper treatment no wrong is done in respect to which damage can be claimed. There is no special hardship about the effect of the ruling in this case. Claimant's firm are Ruckenstein Bros., Wholesale Clothing Manufacturers. During the time claimant was in Germany his brother was in charge of the business which was growing every year. Claimant says that naturally the profit was pretty fair, but was not as good as when he was at home. Business continued to grow from the time he was interned.

I think that the award of the late Commissioner for injury to health is too much, but I do not feel like disturbing it, having doubts especially about the results of the internment at Ruhleben.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, categories (2) and (9) and I find $5,542.50 fair compensation to the claimant with interest thereon at the rate of 5 per cent per annum from the date of the ratification of the Treaty (January 10, 1920) to date of settlement.

JAMES FRIEL,
Commissioner.

January 14, 1927.

DECISION

Case 1397

Re CAPTAIN RUFUS G. SPRAGUE

Claimant is a Canadian, born in Port Elgin, N.B., in 1858. He was in the employ of the Pontiac Steamship Company as master of their ship *Pontiac* torpedoed and sunk in the Mediterranean by German submarine April 28, 1917.

Captain Sprague was confined in various enemy internment camps as prisoner until the Armistice was signed, sometime after which he was released and arrived at his home January 22, 1919.

He claims for the wages he would have earned if he had not been interned and for moneys paid for stores supplementing food supplied to him during internment, for travelling expenses from England to his home in Bridgewater, Nova Scotia and hotel bills while delayed in England. When the ship was torpedoed he lost clothing and nautical instruments and effects to the value of £150.

This claim was before the late Commissioner who allowed it in full, not having before him the British ruling in respect to claims of internees for loss of wages.

Under the ruling of the Royal Commission on Reparations in England which is being followed by the American Mixed Claims Commission, wages cannot be allowed to internees.

I will have to disallow that item of the claim and substitute the British scale of allowance of solatium for internment. The expense items might be questioned, but Captain Sprague made no claim for injury to health or for mal-treatment, and for that reason I will allow his claim as fully as I may under the rulings.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, categories (2) and (9) and I find $1,841.74 fair compensation to the claimant with interest thereon at the rate of 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, to date of settlement.

JAMES FRIEL,
Commissioner.

January 13, 1927.

DECISION

Case 1398

Re JOSEPH ELLIOTT

Claimant is a British subject born in England December 12, 1878. He came to Canada to reside permanently on April 23, 1907. On November 6, 1916, he shipped from the Port of Montreal, on the ss. *Mount Temple* as a horseman and was on that ship when it was captured by the German raider *Moewe* and sunk December 6, 1916, the crew being taken prisoners and eventually interned in Brandenburg Camp.

Claimant was compelled to work and suffered much in health.

The medical record shows permanent incapacity in the general labour market of 20 per cent.

Claimant lost a kit worth $100.00. On his return to England, he received £7 which seems to have been all he has received from any source.

I would allow claimant $1,500.00 to cover internment, injury to health, forced labour and loss of personal effects.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles categories (2) and (9) and I find $1,500.00 fair compensation to the claimant with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

February 1, 1927.

DECISION

Case 1399

Re MALCOLM MCKINNON STEWART

Claimant is a Canadian born at Georgetown, Prince Edward Island, August 29, 1882. He served with the 29th Battalion, Canadian Expeditionary Force in France, was taken prisoner May, 1916, and kept in Germany until the end of the war.

He seems to have been unfortunate with the authorities over him. He was punished different times and was in prison cells, and in punishment lager in Hanover for about 6 months. Prior to being taken prisoner he had an exceptionally strong stomach which was so badly injured by the treatment as to cause ulcers of a grave nature and seriously incapacitate him. His punishment each time consisted of being confined for 21 days and the only food allowed was a small portion of bread daily and a bowl of soup every fourth day. In the Hanover prison the food consisted mainly for a time of soup made of beet root with the sugar extracted, leaving nothing but fibre which no one but a starving person could eat.

The medical record states that claimant was afflicted with Duodenal ulcer, attributed to stomach trouble—pain and distress developed while a prisoner of war in Germany (2½ years) about 6 months of which was cell punishment and that claimant has since been continuously incapacitated since discharge except for periods of few months at intervals of comparative relief. His present percentage of incapacity as a direct result of such injury is in respect to his own occupation 25 per cent to 40 per cent and in the general labour market 50 per cent with a probable further duration of permanent.

Claimant was operated on for ruptured duodenal ulcer and the diagnosis of his case is Ruptured cursive duodenal ulcer. He was in the hospital at the time of the sittings in Vancouver. His statement is corroborated by the Commander and by a comrade, who also was a prisoner of war.

Claimant did not apply for a pension. He said he did not go before the Board at the time of discharge as he thought his stomach in time would be all right and that he had considerable capital at the time and thought there were more deserving cases than his.

I would allow this claim at the amount declared $3,000.00 with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (4) and I find $3,000.00 fair compensation to the claimant with interest as above indicated.

JAMES FRIEL,

February 8, 1927. ——— *Commissioner.*

DECISION

Case 1400

Re FRANK W. HESSIN, c/o THE AEOLIAN COMPANY

Claimant is a Canadian born in Toronto of British parents in 1871, and resident in Canada for twenty years. In 1891 he was sent by the Mason and Risch Piano Co., Limited of Toronto, to Worcester, Mass., as a confidential clerk in connection with interests which they had acquired in that place. These interests were purchased by the Aeolian Company of New York in 1898 and he

became an employee of that company. In November, 1901, he was sent by the Aeolian Company to Berlin, Germany, to develop a market for the company's goods with Germany and other European countries. He resided in Berlin with his family until the war broke out and was interned in February, 1915, the date when all Canadians returned to Ruhleben prison camp near Spandau. His wife and two children went from Berlin to Holland in 1916 where they worked for the British Red Cross until his exchange to England in August, 1918. He was exchanged under the arrangement affecting civilian prisoners of over 45 years of age. He was with the Aeolian Company's London Office from May, 1918 until November, 1918, and then returned to New York where he resumed his position with the same company, and he is now its treasurer. He is a British subject and has never done anything to impair his citizenship such as applying for papers in any other country. All his family retained residence in Toronto. One brother is manager of the Trust Department of the Canada Permanent Company and another is in charge of the Eastern Provinces for the W. J. Gage Company.

He claims on account of injury to health and files a declaration to the effect that he is nervously impaired and has a chronic nephritis, which in the doctor's opinion is the direct result of his exposure and treatment in the German internment camp.

He appeared before the late Commissioner at New York, June 24, 1924, but Dr. Pugsley made no recommendation, awaiting further information.

I think this man is entitled to solatium for internment and possibly to some small amount for illness contracted, which could not have been serious, as he went back to his work as soon as liberated.

There is a question of residence but notwithstanding the terms of the Order in Council, I am inclined to recommend compensation where deserved in cases of Canadians resident almost anywhere who have not lost their Canadian citizenship; otherwise there is no way of their getting compensation. Mr. Hessin was interned because he was a Canadian.

Mr. Hessin made his claim through the British Reparation Claims Department and they sent it on to this Commission.

If he had made a claim before the American Mixed Claims Commission, it would not have been entertained, as he was not a United States citizen.

Subject to consideration by the Government of claimant's status before this Commission, I would recommend that he be allowed $2,500.00, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find $2,500.00 fair compensation to the claimant with interest as above indicated.

JAMES FRIEL,
Commissioner.

July 14, 1926.

DECISION

Case 1401

Re ARTHUR JAMES CHAMBERS

This is one of the claims transferred to this Commission by the British Reparations Claims Department. It was originally put before the Royal Commission for Suffering and Damage by Enemy Action, and was refused in view of the fact that the claimant had not at any time required a domicile of choice in the United Kingdom.

The claim, a large one, is on account of injury to health from internment in Ruhleben Internment Camp from January, 1915, to the end of the war. The report on the case in the British files is as follows:—

"I/1789/H

"*Arthur James Chambers, c/o R. B. Donovan, Solicitor, 100 Hohestrasse, Cologne*

"This claimant was interviewed on 15th September, 1922.

"He was born in the Magdalene Islands, Canada, in 1884. He came to Holland with his parents at the age of 2 years; his father, who was born in England, being at that time a clergyman of the English Church at Rotterdam. He remained in Holland until he was 18 years of age. He came to England for a few weeks to visit relations in 1902, and then went to Germany, where he was employed as a shipping-clerk, and subsequently was manager of a shipping firm at different ports in that country. He had only re-visited England for short periods until the outbreak of war.

"There would, therefore, not appear to have been any permanent domicile of choice in England of this claimant and, therefore, it is a case to be dealt with by the Canadian authorities.

"He was interned on November 6th, 1914, at Ruhleben, and after a few days was released as a British colonial. He was again interned at the same camp, during the end of January, 1915, and remained there until the Armistice.

"He returned to England with his German-born wife and child in December, 1918, and remained there until June, 1919, having in the meantime endeavoured to obtain employment, but without success. He then went to Holland, later to Belgium, and then to Germany, where he arrived in 1920, and has been here ever since employed as a commission agent.

"His health appears to be undoubtedly in a bad condition, and the report from the Consular authorities here is favourable to him.

"He is to be medically examined.

"H. R. DANE.

"22nd September, 1922."

"O.F. 18 of medical re-examination attached. Finding 20 per cent disablement for 2 years from date—six years in all at £300 p.a.—£360 and solatium.

"H. R. DANE.

"25/9/22."

The solatium referred to would be about $1,125.00 in our money.

Claimant has no Canadian domicile and apparently never had, but he has not lost his Canadian nationality acquired by birth. If this country does not pay him compensation there is no way in which he can get it. His case is something like the Macrae case and one or two others we have had to deal with, and subject to special consideration by the Government in view of the wording of the Orders in Council establishing this Commission, I would recommend that compensation be paid to claimant out of the Canadian reparation funds.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2) and adopting the British assessment I find that $2,925.00 is fair compensation to claimant with interest at 5 per cent per annum from January 10, 1920, to date of settlement.

JAMES FRIEL,

November 10, 1926. *Commissioner.*

DECISION

Case 1402

Re DAVID SCHERMANN

Claimant was born in Russian Poland in 1870 and emigrated to this country and for a time lived in Toronto. He was naturalized there in the Courts of General Sessions for the County of York, April 15, 1913, and is still a British subject. He was domiciled in Lille at the outbreak of the war, where he had a shop when the Germans took the city and it became evacuated by the

inhabitants. Later he and his wife were interned by the Germans at Auviller, by reason of his being a British subject and he was kept there from April 24, 1916, to August 18, 1916, when he was released on account of his health.

He claims on account of internment and loss of health and also for loss of merchandise which became deteriorated in value. His claim was submitted to the British Foreign Claims Department and by them transferred to Canadian Reparations.

Strictly speaking he does not come within the scope of our Commission but in other cases I have recommended compensation to claims of Canadian Nationals not resident in this country when they suffered damage from enemy action. This man proves his internment by official certificates, but there is nothing much on record concerning the injury to his health or the loss of his goods.

I would recommend something for him, say $500.00 with interest at 5 per cent from January 10, 1920, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (2), and I find that $500.00 is fair compensation to the claimant with interest thereon at the rate of 5 per cent per annum from the date of the Treaty to the date of settlement.

JAMES FRIEL,
Commissioner.

December 1, 1926.

DECISION

Case 1403

Re HARRY REITER

Claimant was born at Squira, Russia, in January, 1883. He was naturalized a Canadian citizen at Montreal, April 1, 1910. In 1911 he left Montreal on a business trip to Europe and also to see his parents. His mother was ill and died and while he was at home, he used up all his money in helping and was forced to remain in Germany to work and save enough money to return to Canada. After the war broke out he was interned in Ruhleben Camp and was not released until January 31, 1917, when all British subjects residing in Germany were released. He says that while interned he spent £100 of his money for living expenses and clothing for himself and family. He claims on account of injury to health but there is no medical record. The claim was first put into the British Reparation Claims Department and was transferred by them to this Commission.

I would allow claimant $1,200 with interest at 5 per cent per annum.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (2), and I find $1,200 fair compensation to the claimant with interest at 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, to date of settlement.

JAMES FRIEL,
Commissioner.

February 4, 1927.

DECISION

Case 1404

Re GEORGE WILLIAM ROLFF

Claimant is a British subject born at Windsor, Ont., in 1875. He was a partner in a German wholesale house, when the war broke out and the partnership was dissolved by the German Law Court on account of his British nationality and consequently his income stopped.

He is a married man and had a family and mother to support. He was interned in Ruhleben camp as a civilian prisoner of war from February 6, 1915, to May 4, 1917, almost 2¼ years.

He claims for the support of his family during the time of internment and for food stuff and parcels sent to Ruhleben and expenses for clothing and other necessities.

The claim was submitted to the British Reparation Claims Department who informed claimant that His Majesty's Government did not consider that such loss was covered by the terms of Annex (I) of the Reparation Clause of the Treaty of Peace. He was referred to the Clearing Office in reference to his rights under the Treaty with Germany in respect to his exclusion from the partnership. The claim was later sent to this Commission by reason of the claimant's nationality.

I would allow the usual solatium for internment making it a little higher on account of the special circumstances of the case, say $1,500.00, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (2), and I find $1,500.00 fair compensation to claimant with interest as above indicated.

JAMES FRIEL,

February 4, 1927. ——— *Commissioner.*

DECISION

Case 1405

Re CHARLES O. ALLEN

Captain Allen is a native of Nova Scotia, and is about 65 years of age. He was master of the steamer *Strathcona,* owned by the Canada Steamships Lines Limited, Montreal, which was shelled and sunk about 146 miles west of the Orkney Islands by a German submarine April 13, 1917, while on a voyage from the Tyne to Marseilles, France, coal laden. There is no occasion to go into details.

The claimant was kept eight days on the submarine, taken to Heligoland for a night and then taken to Williamshaven, and afterwards to other places of internment in Germany and kept until 30 days after the Armistice was signed.

He claims:—

Loss of bonus	£600
Loss of effects	72
Paid for supplies while prisoner of war	77–8–5½
	£749–8–5½

His wages during his imprisonment were paid by the owners of The Canada Steamships Lines Limited. The bonus was a gratuity given for successful trips. As an item of damages, it cannot be allowed.

The Treaty which provides for the recovery of damages for injuries to civilians would not in the opinion of the British authorities include loss of possible income or earnings during the time of imprisonment. This is the opinion also of the late Commissioner, who heard Captain Allen's case.

The British Reparations Claims Department adopted a schedule dealing with cases of this kind which I am inclined to follow and would allow Captain Allen:—

For twenty months' internment in Germany, allowance..	$ 851 00
Solatium	1,000 00
Paid for supplies as claimed..	379 84
Loss of effects as claimed	353 24
	$2,584 08

The claim falls within the First Annex to Section (I) of Part VIII of the Treaty of Versailles, categories (2) and (9), and I find $2,584.08 is fair compensation to Captain Allen with interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles, January 10, 1920.

JAMES FRIEL,
Commissioner.

January 5, 1926.

DECISION

Case 1406

Re JOHN MORRISON

Claimant is a British subject, a native of Scotland, who came to Halifax in 1919. His claim for loss of property and injury to person was put in to the Foreign Claims Office in March, 1919. The claim was transferred to Canada, the reason given by the British Reparation Claims Department being that Mr. Morrison was permanently in Nova Scotia before the 10th January, 1920, the date of the coming into force of the Treaty of Peace, and so his claim was transferred "in accordance with the arrangements made with the Dominion Government."

Claimant, in his declaration under our form, made December 21, 1921, claims for:—

(*a*) Personal effects, clothing, books, etc. (roughly).. ..	$ 710 00
(*b*) Money in Banca Commerciale (roughly)..	2,770 00
(*c*) Salary lost by imprisonment (roughly)	6,670 00
(*d*) Sum claimed for personal injury (roughly)..	7,750 00
(*e*) Sum paid for meals while in Austrian detention camps	4,000 00
	$21,900 00

The claim was heard by the late Commissioner at Halifax in September, 1924, and Dr. Pugsley seemed to be of the opinion that Mr. Morrison ought to receive compensation for loss of property and personal injury either from this country or Great Britain.

The claim in its origin would be against the Austrian Government, but reparations by Germany under the Treaty of Peace covered injury done by her allies.

The claimant, who went to Austria in 1908, was a Loftsman, which seems to be some sort of a draftsman in connection with shipbuilding, and when the war broke out in August, 1914, was working for an Austrian shipbuilding corporation at Trieste, Austria, and living in Monfalcone (now Italian territory). He was apprehended August 14, 1914, and kept imprisoned until November 23, 1918. Three months after his arrest he was sent to Raabs, in Lower Austria, and in that country he was kept until the end of the war or until he was released, two or three weeks after the Armistice. He claims to have been ill-

treated, and, according to his evidence, it appears that he was so ill-treated at first and became very ill. The bad treatment stopped and hunger was the principal trouble. Claimant had to get his food and clothing through friends at the Red Cross in London. There was no medical certificate attached to the claim filed with the British Office.

In the Medical Report filed with the Declaration for this Commission, the nature of his injury is given as "Nervous breakdown, Anxiety, Neurosis, Dreams," attributed to confinement and ill-treatment for four years—partially incapacitated for three years since release—percentage of incapacity, 20 per cent in regard to his own occupation and 40 per cent in general labour market—incapacity will probably continue many years—hearing definitely impaired, dating from period of internment.

At the time of his internment claimant was a single man, aged 35, earning £6 a week. He had the equivalent of $2,700.00 Canadian money at interest in the bank (Banca Commerciale), deposited at different times between March, 1911, and June, 1914. There is no evidence that this money was lost or that the bank, now operating under the Italian Government, will not make it good. At the date of hearing the claimant had never attempted to withdraw it. Claimant had another account at another bank in Trieste, called the Union Bank, and this money he withdrew to keep him going, also, so he states, money from home. Moneys paid for board and clothing and that sort of thing are not allowed, neither are wages or prospective earnings, and even if that were not the rule adopted by the British Reparations, in this case claimant would hardly seem entitled to such compensation. If he had not been interned he would have been in the British Army. I would allow him for personal effects lost, as declared, $710.00, and for personal injury $2,500.00.

It has been the policy of the British Reparation Claims Department to award a solatium in addition to actual damage sustained by claimants in certain classes of claims, for example, a solatium for internment is allowed in all cases, and for illness during internment a compensation of from £10 to £20, their allowance for different internment camps is set out, and one clause reads "Other camps and quasi internment at Raabs, £75", indicating when read with the context, that amount for any period up to 12 months, and one-half that amount for every subsequent 6 months. I would therefore allow claimant $100.00 solatium for illness and $1,313.00 solatium for internment.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, categories (2) and (9). and I find that $4,623.00 is fair compensation to the claimant with interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, to date of settlement.

February 18, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1407

Re R. W. HAYWARD HIMBURY

Claimant is a British subject, born in England in March 1900, who came to Canada in 1919 and is living here.

He was serving as an apprentice on the British Merchant Ship *Clan Mactavish*, 5,816 tons, sunk off Teneriffe, Spain, by the enemy raider *Moewe*, after a fight January 16, 1916. The master and crew were made prisoners.

Claimant lost personal effects to the value of £60.5.0. He and some of the crew were kept on the *Moewe*, during further operations later being transferred

to another German vessel, and landed at Teneriffe, from where they were sent home by the British Consul.

His claim was submitted to the British Reparation Claims Department and by them transferred to this Commission.

Claimant says that his imprisonment brought on pleurisy which has injured his health, but there is no medical record.

Adapting the British Admiralty scale, I would allow claimant $200.00 solatium or torpedo money and $300.00 for loss of personal effects, with interest at 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, categories (2) and (9), and I find that $500.00 is fair compensation to the claimant with interest as above indicated.

JAMES FRIEL,
Commissioner.

September 27, 1926.

DECISION

Case 1408

Re CHARLES HENRY JACKSON

Claimant is a British subject born in England, in 1894, who came to Canada in 1919. At the outbreak of war he was a seaman on the British ship *Trevorian*, then in Hamburg. The ship and crew were detained.

On November 11, 1914, he was taken and interned in the hulks and later in Ruhleben. He had some trouble with his eyes but does not show any special mal-treatment by the Germans.

I think his case can be met with by allowing the solatium according to the British Reparation Scale.

Claimant received £42-0-8 from the (Refunding British Government Relief Fund Loan).

I would allow claimant $1,500.00, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find $1,500.00 is fair compensation to the claimant, with interest as above indicated.

JAMES FRIEL,
Commissioner.

May 10, 1926.

DECISION

Case 1409

Re JOHN V. REYNOLDS

Claimant is a British subject born in England May 15, 1890. He was chief refrigerating engineer on the ss. *Voltaire*, 8,618 tons, operating in the Merchants Service between England and America when that ship was captured in the Atlantic Ocean by the enemy raider *Moewe*, December 2, 1916.

Claimant with the rest of the crew was taken prisoner and eventually brought to Germany and kept there in different prison camps until the end of the war.

He claims he sustained permanent injury to his health acquiring a form of nasal catarrh and rheumatism.

His claim was submitted to the British Foreign Claims Department for loss of personal effects, injury to health and loss of earnings and maintenance for food, etc., sent from England.

In 1919 he was advised by his physician, for reasons of health to live in Australia and he was on his way there when he stopped over in Vancouver and decided to settle there. He got employment and apparently is fairly successful.

At the time of the hearing of his case he was owner and manager of the Power Plant Engineering Company.

The Directors of the Foreign Claims Office transferred his claim to this Commission.

I think it may be fairly dealt with by adapting the scale of the British Reparation Commission.

The claim for loss of earnings cannot be allowed:

I would allow the balance, for loss of personal effects (he received £50-0-0 from the British authorities) and solatium for two years internment with an allowance for illness and an allowance for food and clothing sent from England and money expended, in all, $1,850.00

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, categories (2) and (9), and I find $1,850.00 fair compensation to the claimant with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

May 12, 1926.

DECISION

Case 1410

Re HARRY W. SOLLOWAY

Claimant is a British subject through his father and grandfather. He himself was born at Leipnick, Moravia, that part of Austria which is now Czecho Slovakia, where his father was then employed.

The father took the necessary steps through the British Consul at Vienna, to preserve the claimant's British nationality.

Claimant came to Canada in 1910 and 1914 was employed as a groom at Government House, Toronto. In that year he went back to Leipnick to see his father and was interned by the Germans and kept in prison camps—Sennelager and Ruhleben from September 3, 1914, to March 22, 1918, when on account of his health he was removed to Holland where he was looked after by the British Government. When in the German camps he had been maintained by food sent from England which was paid for by himself and thinks that he spent £50 per year. He claims also for time and wages, but that cannot be allowed.

Internment cases in Great Britain are dealt with under a scale of so much a month. I would adapt that scale to this case and allow claimant $1,100.00 on account of internment and $735.00 for disbursements for food and other supplies. This second item is generous enough to cover interest and all I intend to allow in respect to it, to date of ratification of Treaty of Versailles.

The claim falls within the First Annex to Section (I) of Part VIII of the Treaty of Versailles, category (2), and I find $1,835.00 is fair compensation to the claimant with interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty, January 10, 1920, to the date of settlement.

JAMES FRIEL,
Commissioner.

January 12, 1926.

DECISION

Case 1411

Re JOHN SHORTIS

Claimant is a British subject, born in England in May, 1876, and came to Canada about the year 1897. He shipped from the Port of Montreal on the ss. *Mount Temple* November 6, 1916. The ship was torpedoed and sunk by the German raider *Moewe* on December 6, 1916, and the crew taken prisoners and eventually interned in the Brandenburg Prison Camp. Claimant was compelled to work outside the camp with pick and shovel and do all kinds of work. He suffered in health and his eyesight was greatly impaired. When he got back to England the military doctors sent him to the hospital on account of loss of eyesight and rheumatism. He lost his kit worth $100.00 on account of which he received £5 from the British Board of Trade. He was a prisoner for two years and one month.

This case was heard before the late Commissioner who allowed claimant to amend his claim. He originally declared for $1,050 loss of wages which he might have earned if it had not been for his internment. There is no medical record or evidence.

I would allow claimant $1,500.00 to cover internment, injury to health, forced labour and loss of personal effects.

This claim falls within the First Annex to Section (1) Part VIII of the Treaty of Versailles, categories (2) and (9) and I find $1,500.00 fair compensation to the claimant with interest thereon at the rate of 5 per cent per annum from the date of the ratification of the Treaty to the date of settlement.

JAMES FRIEL,
Commissioner.

December 2, 1926.

DECISION

Case 1412

Re THOMAS BELL

Claimant is a British subject born in Scotland, June 3, 1896. He was cook on the British Merchant ship *Vienna*, of Leith, which was in the port of Hamburg when war broke out and was detained there from July 31, 1914, when he was taken off the ship October, 1914, and put in the German hulks in the harbour. He left these November 6, 1914, and went to Ruhleben and was there until November 24, 1918.

He claims for loss of wages, loss of parcels of food and clothing sent him by friends, impairment of health and for detention. His spare clothing was taken from him at Hamburg and kept.

As to injury to health, he filed a certificate from Dr. Donald, of Leith, written in 1920, to the effect that claimant was under treatment January, 1919, for neurasthenia from the result, it was stated by him, of being a prisoner of war. His symptoms were such as might have been caused by imprisonment.

This claim was first put in to the British authorities and after the claimant became domiciled in Canada in 1919, the papers were sent to this Commission. Claimant filed his claim on our declaration form on January 3, 1922, without a medical report. The amount of his claim is £1,520 and he acknowledges receipt of £15 from the British Board of Trade at Leith for loss of property.

The claim was heard by the late Commissioner at Toronto, in May, 1924.

Claimant stated that for the first year and a half he was made work about the camp. He did not do anything except take out the rubbish and garbage. He got four marks a week for what they called the British Government Relief Fund.

Claimant's parcels from home were plundered.

There is no medical evidence given. The late Commissioner assessed compensation at $3,000.00 and intended to ask the Canadian Government to refer the matter to the British authorities. He had already received notice from the British authorities that—

"The domicile of a man on the date on which he presented himself a claimant, would govern, and as Mr. Bell was in Canada at the time he filed his claim, the British authorities could not deal with his case."

I think Canada will have to pay this claim and others similar, for the reasons already given several times, but I would lower Dr. Pugsley's assessment.

The owners of the ss. *Vienna* paid claimant's wages from the date of detention until October 5, 1918. The wages that he might have earned, cannot be allowed.

The British authorities allowed a solatium for internment and for illness or injury to health when proved.

There is no medical evidence in this case, but claimant was only a boy at the time and would probably be ill occasionally. I do not think the forced labour would amount to much but we will make some allowance for it.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find $1,800.00 fair compensation to the claimant, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

January 12, 1927.

DECISION

Case 1413

Re OSWALD W. CHAPMAN

Claimant is a British subject born in Hamburg, Germany, in 1896, of British parents. He came to Canada in 1920. When the war broke out he was going to school at Hamburg and within two weeks he was taken by the German military authorities and eventually sent to Ruhleben camp where he was interned until after the Armistice.

He claims for loss of wages during the period of confinement, loss of education and business advantages, and injuries to health resulting in a nervous breakdown. The medical record indicates—disability 33⅓ per cent since 1918. It goes on to say that the claimant cannot read at night by artificial light and cannot keep the same job many months and cannot take inside work.

This claim was presented first to the British Reparation Claims Department who sent it to this Commission on June 12, 1925, stating that their department was limited to the consideration of claims of British nationals other than those belonging to parts of the British Empire to which a separate share of the reparation receipts has been allotted.

The Commission was not able to examine this claimant personally. The claimant is now employed with the Big Missouri Mining Company Limited near Stewart, B.C., operating a diesel engine at a wage of $6.20 per day.

The facts before the Commission are too meagre to properly deal with the claim. Claimant was a school boy of 18 when interned and no doubt the conditions of the prison camp would affect his health; at the same time had he not been in that prison camp, he would, no doubt, have been with the other boys in the field, where conditions were difficult and danger much greater.

The British Reparation Claims Department fixed a solatium for Ruhleben camp—£75 for the first year and £25 for each additional six months. They

allowed something also for sickness. Adapting their scale, I would allow the claimant $1,500.00 with interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles, January 10, 1920, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find $1,500.00 fair compensation to the claimant with interest as above indicated.

January 17, 1927.

JAMES FRIEL,
Commissioner.

Case 1414

Re J. H. CARR

No action taken. No information. Claimant did not appear.

Case 1415

Re J. D. LUDGATE

No action taken. Prisoner of War. Money taken by Germans £9-4-0= $44.77.

Paid by Dept. of National Defence.

Case 1416

Re AUGUSTE ALLICE

On June 30, 1924, the Secretary wrote claimant to find out if he made a claim to the Belgian authorities and if it had been rejected and upon what grounds. There was no reply.

While this Commission is limited to claims of civilians resident in Canada, there are occasions when we are recommending consideration for Canadian claimants who were not resident in Canada but had suffered loss by reason of their nationality which they had never lost. There was a special recommendation in such cases.

In this case, claimant left Canada in 1892 when he was fifteen. His father was an Italian and his mother from France. Most likely they were permanently settled in Canada and that the family moved away together, in which case his nationality would follow his father.

Anyhow with the meagre information on the record this case will have to be laid aside.

February 2, 1927.

JAMES FRIEL,
Commissioner.

Case 1417

Re PHILIP CAMPBELL

This claim was filed with the British Reparations Department for compensation on account of internment and forced labour in Germany. Claimant alleged that he was a fireman or trimmer on the ss. *Georgic,* captured by the Raider *Moewe* December 10, 1916; that he was in various camps in Germany until the end of the war and that for one year he was forced to work in a coal mine for which labour he received only 500 marks. He was supplied with food

by the British Red Cross. The declaration shows that Campbell was born in Liverpool, August 29, 1896. He says that he shipped under the name of "John Keenan." There was another "John Keenan" on board. Claimant signed his pay sheet as "Keenan Campbell", this is rather confusing. He says he got discharge books. The one on the *Georgic* was lost in Germany, and he says he had one since but he does not produce it. The claim was referred to this Department by reason of Campbell now living in Guelph. His solicitor is George A. Drew of that city. The papers being received from England after the hearings in Ontario were over, we asked Mr. Drew, under date June 24, 1925, if he would personally certify as to the bona fides of the claim and statements made in the declaration, and there has been no reply. The claim will go into the "No action" file.

JAMES FRIEL,
Commissioner.

February 7, 1927.

Case 1418

Re MRS. ANNIE BEETON

No action taken. Claimant did not appear. Son died of pneumonia while a prisoner of war. Claim for loss of life amount not stated.

DECISION

Case 1419

Re HYMAN FISHMAN

Claimant is a Russian Jew, a cigerette maker by trade who came to Canada in 1910, and was naturalized in the Circuit Court for the District of Montreal, September 30, 1913.

He was in Berlin on business at the time of the outbreak of the war. By reason of his being a British subject he was interned by the Germans in Ruhleben Camp from September 6, 1914, until January 1, 1918. He had then developed lung trouble and was released apparently on that account. Claimant was ill for one year in London after his release and for a long time in Montreal where he was a patient in the Mount Sinai Sanitarium for tuberculosis and in the Royal Victoria Hospital where he is at the present time.

Claimant was 51 years of age at the time of his internment. He had been earning between $20.00 and $40.00 per week.

This claim was heard by the late Commissioner at Montreal in June, 1923, who noted it for allowance at the amount claimed—$5,000.00 for loss of time during internment and $5,000.00 for injury to health.

Dr. Pugsley's draft judgment is attached. It was not signed.

I do not feel like making a different recommendation except in respect to the allowance for loss of time but I do think that there should be some corroboration of claimant's evidence given through an interpreter that he had been, for the time mentioned or any time, in the German prison camp. No papers were shown and Mrs. Fishman who was with her husband in Germany but not interned was not called as a witness. Dr. Pugsley, however, seemed satisfied and subject to some further inquiries, I assess the claim.

I will not interfere with the allowance for loss of health but in respect to the allowance for loss of wages, damages in that respect, following the ruling of Lord Sumner, Commissioner, cannot be allowed.

The Germans had a perfect right to intern the claimant, a British subject, found in their territory during the war, subject to proper treatment.

The same ruling held, that where a civilian has suffered personal injury or impairment of health due to acts of cruelty, violence or maltreatment by the enemy so that his capacity to work has been diminished, loss of wages due to such incapacity is admissible (subject to proof by medical evidence), as part of the measure of the damage suffered. In this case such loss of earnings was considered in the award for damage to health.

The British Reparation Commission allowed a solatium for internment, and set a scale for the different camps and under the scale allowed prisoners of war in Ruhleben Camp, claimant would be entitled for internment and sickness during his sojourn in that Camp to the sum of $1,125.00.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find $6,125.00 fair compensation to the claimant with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

May 12, 1927.

JAMES FRIEL,
Commissioner.

DECISION

Case 1420

Re WILLIAM LOGAN

Claimant is a British subject born in Glasgow, Scotland, in 1873, who came to Canada in 1900 and worked at his trade in Montreal, Toronto and other places. His wife and children also came to Canada. When the war broke out claimant sought to enlist but owing to the results of an old injury to one eye, he was not accepted. He joined the crew of the ss. *Mount Temple*, at Montreal, in the summer of 1916, hoping to be taken in the army when he got across but was advised by the authorities in London to stay by the ship for another voyage.

The *Mount Temple* was captured by the raider *Moewe*, and sunk December 6, 1916, and the crew were taken prisoners and eventually interned in Brandenburg prison camp where claimant was compelled to do blacksmith work until his release after the armistice. He received one mark a day which would equal about five cents.

Logan had to leave his kit and effects when ordered off the ship.

Following the British scale I would allow claimant the sum of $1,200.00 to cover solatium for internment and forced labour and on account of the loss of his effects.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, categories (2) and (9), and I find $1,200.00 fair compensation to the claimant, together with interest at the rate of 5 per cent per annum from the date of sinking, December 6, 1916, to date of settlement.

August 27, 1927.

JAMES FRIEL,
Commissioner.

DECISION

Case 1421

Re HON. HENRI S. BELAND, M.D.

Claimant is a Canadian, born October, 1869. He is a physician and surgeon by profession. He was on the Quebec Legislative Assembly for a time and was a Member of the Canadian Parliament for several terms. He was Postmaster-General in the Government of Sir Wilfred Laurier, from August until October, 1911, and was Minister of the Soldiers' Civil Re-establishment from December, 1921, until appointed to the Senate in September, 1925.

When war broke out Dr. Beland was in Belgium where he had been married to a Belgian lady some short time previously. He joined the medical staff of

the hospital service in Antwerp and was in the soldiers' hospital there until October 9, 1914, the date on which the Germans entered Antwerp. He made his home in the town of Cappelian, a few miles outside the city. He continued in the hospital for a time until notified by the German authorities that he was no longer needed. The two physicians practising in Cappellan had gone with the Belgian army and Dr. Beland took up practice amongst the civilian population. In the month of April, 1915, one of the Belgian doctors resumed practice in the town and claimant decided to return to Canada. Dr. Beland applied for passports from the German authorities who then discovered for the first time that he was a British subject. He was offered the passports on certain conditions which he could not accept.

The conditions were to the effect that first of all, twenty per cent of any property that his wife had in Belgium should be surrendered annually to the German authorities. Another condition was that he should engage himself never to serve against the German Emperor and there were some other conditions not mentioned in the record.

Claimant was allowed his liberty for a while but was required to report to the authorities every two weeks. He was arrested on the 3rd of June, 1915, and taken to Berlin to a fortress prison called Stadtvogtei where he was kept until the 11th day of May, 1918. There were other prisoners there of different nationalities to the number of 150. The food was not very good and there was small opportunity for exercise. Dr. Beland claims for detention and for loss of income and practice. He makes no claim for injury to his physical condition but thinks there is permanent injury. There is no medical report or evidence and the claimant did not care to submit any claim on the score of loss of health.

It is not claimed that there was any loss or damage to claimant's property by reason of enemy action.

Dr. Beland has not practised medicine since January 1, 1922. He was a Member of the Canadian Government at the time of the hearing of his claim before the late Commissioner, at Montreal in June, 1923.

Dr. Pugsley noted the claim for allowance at the amount declared $32,000.00 with interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles, January 10, 1920, to date of settlement.

For the guidance of the British Reparation Claims Department regarding the admissibility of claims in respect to loss of wages, injury to health, etc., owing to internment and respecting the proper interpretation of Annex (I) to the Reparations Part of the Treaty of Versailles, the Royal Commission on compensation for suffering and damage by enemy action, under the Chairmanship of Lord Sumner, established to make recommendation as to the distribution of the £5,000,000 provided for the purpose of making ex gratia grants to sufferers from enemy action, adopted the opinion that there was no provision in the Annex for loss of wages during internment and that category (2) which deals with claims in respect of internment provides only for damage caused by acts of cruelty, violence or maltreatment (including injuries to life or health as a consequence of internment). Claims of this nature cannot be sustained. It goes on to say that the Annex is framed on the footing, as it had to be, that a belligerent has a right to intern nationals of his opponents where found in his own or in occupied territory. Subject to giving proper treatment. Accordingly unless there is improper treatment no wrong is done in respect of which damage can be claimed.

The British Commission was also of the opinion from the evidence submitted to them that in all civilian internment camps in Germany and other enemy countries, a certain amount of unnecessary hardships were experienced by internees amounting in the opinion of the Commission to maltreatment within the meaning of Annex (I) so as to entitle all internees to some compensation

even though no definite personal injury or injury to health had resulted. Solatium was therefore granted to internees by the British Reparation Department at a rate for the different camps not because of internment (which is in itself legitimate) but owing to special hardship or sickness suffered as a result of such imprisonment. The solatium was the same to all classes in each individual camp but some difference was made with reference to the circumstances prevailing; some of the camps being more sanitary and possessing more amenities than others.

The highest rate under the English scale was £100 a year. Under that rate Dr. Beland would be entitled to $1,500.00 for his three years internment.

His claim in respect to detention, loss of revenue and loss of practice will have to be disallowed.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (2), and I find $1,700.00 fair compensation to the claimant, with interest as already indicated.

JAMES FRIEL,
Commissioner.

December 17, 1926.

SUPPLEMENTARY

This case was reopened at claimant's request, who stated that owing to developments he wished to submit again a claim for injury to health during the term of his imprisonment. That part of his original claim, as indicated above, had not been presented except in a general way before the late Commissioner. No medical proof had been submitted. Notwithstanding that fact Dr. Pugsley was allowing Dr. Beland $10,000.00 for injury to health.

The ruling of the British Commission is that medical evidence must be furnished in support of a claim for injury to health. Dr. Beland now presents such evidence with further details of his experience in the German prison, making his case one of the most grievous that has come to the notice of this Commission.

The first Medical Report is from Dr. Albert LeSage, Dean of the Medical Faculty of the University of Montreal, and without going into details and medical phraseology it is to the effect that the claimant has a permanent affection of the heart which reduces his ability to work and his duration of life in spite of all that can be done for him, and that Dr. LeSage believes that Dr. Beland's long imprisonment in the jail in Germany during the war together with privations, bad hygienic conditions, moral tension and continuous anxieties first caused a serious functional trouble of the heart.

Another report is filed from Dr. Leonard M. Murray, eminent heart specialist, Toronto, dated November 28, 1927, which agrees with the report of Dr. LeSage as to claimant's condition, and goes into further details, this after personal examination. The concluding paragraph is as follows:—

"In reply to your question, whether or not your experience as prisoner in Germany would have an influence on your present condition, I would say: that, while your confinement in a common prison, with bad ventilation, bad food and continued anxiety and lack of exercise, would not initiate the aortic insufficiency which is present, it would most certainly cause extreme aggravation. There is no doubt in my mind that this experience has been the cause of a great deal of the condition which is present to-day and of the shortening of your life expectancy."

Plainly, Dr. Beland's health was injured and his life shortened by his imprisonment. I think that the sum of $15,000.00 will be fair compensation under the head of injury to health to be added to the $1,700.00 award in my former judgment, all with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

December 2, 1927.

CLASS H

The Late Commissioner Pugsley's Decisions Approved by Commissioner Friel

AIR RAID INJURIES

Case No.	Claimant	Nature of Claim	Amount Claimed	Decision
			$ cts.	$ cts.
1422	Considine, Mrs. Christina	May 25/17	15,000 00	10,000 00

COMMISSIONER FRIEL'S DECISIONS

1423	Flower, Miss Maud	At. Folkstone	Not stated	Dismissed
1424	Gardiner, Mrs. Kate	Husband killed, London September 30/17	10,000 00	"
1425	Kier, David B	Personal injury to wife at Ramsgate, August 1917.	700 00	"
1426	Rice, Mrs. Iva B	Husband, soldier on leave killed September, 4/17.	9,051 80	"
1426 A	McLean, Angus H	Soldier, damage caused during air raid in France.	2,000 00	"
1427	Belsey, Mrs. Florence	Mother killed, Kent, Eng., May 20/18. Expenses.	500 00	370 00
1428	Sanford, Mrs. Winnifred A.	Personal injury, October 13/1915	1,800 00	1,800 00
1429	Bedwell, Mrs. Hilda	London, Eng., July 8/1917. Personal injury and personal effects.	750 00	3,000 00
1430	Friend, E. W. B	Personal injury at Folkstone	3,000 00	3,000 0
1431	Hough, Miss Ada E	Air raid. No particulars filed	Not stated	No action
1432	Lightbody, E	Loss of life of mother in 1915	10,000 00	"
1433	Tinsley, J. G	Personal injury in air-raid	39 68	Cannot locate
1434	Madison, Mrs. Geo	Air raid injury in England, 1918—no Canadian domicile.	750 00	No action
			53,591 48	18,170 00

DECISION

Case 1422

Re Mrs. Christina Considine

This is a claim which arises out of injury sustained by the claimant as the result of an air raid by Germany which occurred at Folkstone, England, on May 25, 1917. The claim is as follows:—

1. Loss of life of son.. .. .. $ 7,500 00
2. Personal injury and expenses of 'son's death.. .. .. $ 7,500 00

Total.. .. .. $15,000 00

At a sittings held before me at Toronto on May 8, 1924, the claimant appeared and gave evidence. She stated that she was born in Scotland, but has lived in Canada since June, 1914. Her husband had enlisted and she went to England in January, 1918, to be with her own people and was staying at Cheriton, near Folkstone during the air raid which occurred on May 25, 1917. Her little boy aged 5 years and seven months was killed. Mrs. Considine was struck with several falling pieces from the bomb and was in a hospital for about 5 weeks and underwent an operation. Her left leg was broken. She had enjoyed perfect health up to that time. Later she was taken to the Royal Victoria Hospital at Folkstone where she remained until

October, 1917. Here she underwent another operation. She became discontented and finally went to stay with an aunt in Scotland where she remained until about June 1, 1918. The British authorities asked her if she could return to Canada and as her husband had been returned from France wounded she went by way of Buxton. She had an open wound in her leg all the time and went to the hospital in Buxton to have it dressed and they made her remain for some time. She finally returned to Canada in September, 1918, her husband returning with her. They arrived at Kingston, Ontario, about October 9, 1918. She then went to the hospital at Kingston and had treatment and X-Rays and was again operated upon. She had another operation in 1919. She has been lame ever since and her health has failed considerably. A letter was read from Dr. Cameron of St. Michael's Hospital, Toronto, dealing with her lameness. Her lameness affects her household duties considerably and they have not sufficient means to engage hired help. She was 40 years of age at the time of the hearing and has no children living. She puts in a certificate by Dr. Fisher of Kingston, showing that she was suffering from wounds in the left hip, left knee, left chest, right knee and right arm. The doctor advises that her injuries will be permanent. The only compensation Mrs. Considine received was from a Committee in Folkstone who gave relief there to sufferers from air raids. This amounted to about 10s. a week while in Folkstone.

Mr. Considine appeared and gave evidence. He corroborated his wife's evidence as to the air raid and gives details. He also corroborated her statements as to the various treatments she has received. He stated she is suffering greatly from the effects of her wounds and there is always danger that poisoning will set in and that she will lose her life. She is greatly impeded in the performance of her household duties. Mr. Considine is out of work and cannot afford to engage help.

Mrs. Considine on being re-called stated that her clothes were torn to pieces at the time and she claims $100.00 on this account.

Upon a review of the evidence I find that I cannot allow Item 1 of the claim for loss of life of the child, as the possibility of dependence upon an infant is too remote. I therefore disallow this item for $7,500.00

With regard to Item 2, as the claimant was maimed for life and has had to undergo severe pain and is even yet in danger of graver consequences as a result of this air raid, I recommend that this item should be increased to $10,000 which I allow and to which I think should be added interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles (January 10, 1920) to the date of settlement.

WM. PUGSLEY,
Commissioner.

DECISION

Case 1423

Re Miss Maud Flower

This claim was filed on the form used by the British Reparation Claims Department and is properly a claim of Miss Maud Flower who was injured during an air raid at Folkstone May 25, 1917. Mr. Matthews is her step-father. She herself is an English girl and so far as the records show, was never in Canada and the claim is one for the consideration of the British authorities.

The late Commissioner was willing to take evidence and forward it to England if so desired but advices were received that no further claims could be considered by the British authorities as against funds at their disposal.

On the face of it, the claim seems to be a deserving one and it seems to me that a wrong would be done if the matter were thrown out because of lack of jurisdiction.

I would recommend that the Canadian Government take the proper steps to have this case re-opened in England by the British Reparation Claims Department and given the consideration it deserves.

JAMES FRIEL,
Commissioner.

January 11, 1926.

DECISION

Case 1424

Re MRS. KATE GARDINER

Claimant is a Canadian and claims on account of loss of her first husband, Sidney C. Hepworth, who was killed in an air raid in London, September 30, 1917, while serving with the Canadian forces.

This claim cannot be entertained. The husband was not a civilian, he was a soldier. The claimant and her child were given pensions, which she enjoyed until she got married again and which the child will continue to receive.

The claim is disallowed as not coming within any of the categories.

JAMES FRIEL,
Commissioner.

April 15, 1926.

DECISION

Case 1425

Re DAVID KEIR

The claim is on account of shock to claimant's wife in an air-raid by the Germans in the town of Ramsgate, England, where Mrs. Keir was then residing.

Mrs. Keir is a native of Carberry, Manitoba.

There are no further particulars given regarding this claim. There is no medical record and neither of the parties appeared at the hearing of the claims in Calgary, for which they were sent notices.

I will have to disallow the claim without prejudice, however, to taking it up again should it be further pressed.

JAMES FRIEL,
Commissioner.

April 24, 1926.

DECISION

Case 1426

Re MRS. IVA BERNICE RICE

Claimant is a Canadian. She claims on account of the loss of life of her husband who was number 602952, Private Albert Henry Bond, 3rd Overseas Battalion, Canadian Expeditionary Force, killed in London, England, September 4, 1917, as the result of a hostile air-raid.

His widow got a pension until she married again.

This claim will have to be disallowed as it does not come within any of the categories of the First Annex to Section (I), Part VIII, of the Treaty of Versailles.

JAMES FRIEL,
Commissioner.

June 19, 1926.

Case 1426A

Re ANGUS H. McLEAN

No action. Claim not pressed.

DECISION

Case 1427

Re MRS. FLORENCE BELSEY

Claimant is a British subject born in England who came to Canada January, 1919. She claims on account of the death of her mother, with whom she was living and who was killed in an air-raid May 20, 1918.

The claim covers expenses for funeral, etc., and damages for breaking up their home.

It is not exactly a case of dependency but the claimant is entitled to some compensation.

I would allow the claimant $370.00.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (9), and I find $370.00 is fair compensation to the claimant, with interest at the rate of 5 per cent per annum from the date of loss, May 20, 1918, to date of settlement.

June 28, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1428

Re MRS. WINNIFRED A. SANFORD

Claimant is a British subject, born in England, who married a Canadian soldier and in 1919 came to Canada to live. The claim is on account of injuries received in a zeppelin air raid in the neighbourhood of the Strand, London, October 13, 1915. She was then Winnifred Owen, working as a saleswoman with a firm in St. Paul's Churchyard, and they certify as to her employment, wages and injury. The claimant was quite severely injured. She was three weeks in bed and could not work for two years, and is still partially incapacitated. She lost the hearing of one ear and is quite deaf, and the injury will be permanent. Her husband is a rancher, and they have one child.

I would allow Mrs. Sanford the amount she claimed, $1,800.00, with interest at 5 per cent from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (1), and I find $1,800.00 is fair compensation to the claimant, Mrs. Winnifred A. Sanford, with interest as above indicated.

May 15, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1429

Re MRS. HILDA BEDWELL

Claimant and her husband are both British subjects, natives of England. She was born March 23, 1892, and he was born August 24, 1889, and came to Canada in 1904. He was serving with the Canadian Expeditionary Forces when

they were married in London, in December, 1916. She was a shop assistant in a drug store earning about £60 per year. Her health was good. While in her employment she was badly hurt by explosion of bombs in a daylight air-raid by the enemy July 8, 1917. She was treated at Guy's Hospital, London. Her claim was put in to the British Reparation Claims Department and the medical record discloses—nerves in bad condition from shell shock, injury to right leg, setting up ostreomylitis of the tibia, which I infer to be tuberculosis or some disease of the bone; her leg was badly bruished, and the disease was diagnosed as chronic. Her percentage of disability was rated at 50 per cent in her own occupation and 80 per cent in the general labour market. The probable duration of such incapacity was indefinite as "she will have to undergo one or more operations for the bone condition." Subject, when she gets in a nervous state, loses her sight. The medical report is signed by R. N. W. Shillington, M.D., Lethbridge, and dated December 13, 1921.

Mrs. Bedwell then claimed £150 on account of her injuries. She came to Canada in 1920, with her husband who was a disabled soldier, drawing a pension. He got employment with the city authorities in Lethbridge and his wages are about $120.00 a month.

Under date of September 8, 1925, Dr. Shillington certifies as follows:—

"*This is to certify that Mrs. Hilda Bedwell was operated on by me in February, 1922, for osteomylitis of the right tibia. She was in Galt hospital for six weeks and twenty-eight weeks in bed at home afterwards and has been under medical treatment ever since as her nervous system is in very bad condition. She has been under treatment ever since she came to the country suffering from nervous instability due, I think, to her injuries in the air-raid and I feel certain that this woman will be more or less a chronic invalid all her life and unable to take her place in the labour world.*"

It may be mentioned also, that she lost the sight of one eye. She has two children born in 1921 and 1922 and there is another child of a former marriage, aged now 13.

I would allow the claimant $3,000.00.

This claim falls within the First Annex to Section (1), Part VIII, of the Treaty of Versailles, category (1), and I find $3,000.00 is fair compensation to Mrs. Hilda Bedwell, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Peace, to date of settlement.

JAMES FRIEL,
Commissioner.

April 20, 1926.

DECISION

Case 1430

Re EDWARD W. B. FRIEND

Claimant is a British subject born in England, in 1873. He was injured at Central Railway Station, Folkestone, Kent, England, May 26, 1917, by a bomb from an enemy air-craft. He was then driving an omnibus. The bomb exploded immediately behind the bus almost totally wrecking it, and killing the horse and the claimant was shot in the back with shrapnel. He was in the hospital for two months and there is a fragment of shrapnel still in his lung too deeply embedded to be removed. The effect of the shock persisted, so the medical record discloses, leaving claimant in a permanently disabled condition with a percentage of 80, incapacity. His health before the accident, apparently, was not any too good as he was turned down for military service.

He came to Canada in 1920 and at the time of the hearing was keeping a small shop.

This claim was first put in to the British Reparation Claims Department, and by it transferred to this office.

I would allow his claim at amount asked for at the hearing, $3,000.00, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (1), and I find $3,000.00 fair compensation to the claimant, with interest as above indicated.

JAMES FRIEL.
Commissioner.

August 3, 1926.

Case 1431

Re Ada Elizabeth Hough

No action taken. Injured in an air raid in England. No formal claim filed nor any particulars.

Case 1432

Re E. Lightbody

No action taken. Claim for death of mother in an air raid in Edinburgh, Scotland. Claim withdrawn as per letter of December 19th, 1923.

Case 1433

Re J. G. Tinsley

No action taken. Damages in an air raid at Wigan. No evidence in support of claim and no information as to whereabouts of claimant.

DECISION

Case 1434

Re Mrs. George Madison

This claim was presented to the British Reparation Claims Department by Charles McCluskey, father of Catherine McCluskey, who married George Madison March 26, 1919. Madison was born in Lindsay, Ont., April 1897. The claim is on account of injury to Catherine McCluskey suffered in an air raid at John Bulls Odhams Printing Works, Long Acre, W.C., England, January 28, 1918.

Mrs. Madison moved to Rochester, N.Y., from England. Her father wrote the British Reparation Claims Department January 22, 1923, that owing to expenses and difficulty in getting the forms filled and doctor's certificates, she did not trouble to send the forms. The medical report from the doctor in England dated July, 1918, certified that Mrs. Madison was totally incapacitated from January 28 to April 28, 1918, by injuries to her foot and heart and partially incapacitated from April 28 to June 25, 1924.

There seems no reason why this Commission should further consider this claim which apparently is not a serious one anyhow.

The claimant establishes no Canadian connection except that she is married to a man born in Canada and there is nothing on the record from him.

This claim will have to go in to the "no action" file.

JAMES FRIEL.
Commissioner.

February 2, 1927.

CLASS I

THE LATE COMMISSIONER PUGSLEY'S DECISIONS APPROVED BY COMMISSIONER FRIEL

MILITARY EFFECTS OF DECEASED SOLDIERS LOST AT SEA WHILE IN CARE OF MILITARY ESTATES DIRECTORATE

Case No.	Claimant	Amount Claimed	Decision
		$ cts.	$ cts.
1435	Cockburn, Wm. A.	400 00	400 00
1436	Durie, Mrs. Annie	349 50	349 50
1437	Wood, Mrs. Marcelle G.	275 00	275 00
1438	Jarvis, Mrs. Edith D.	223 00	223 00
	COMMISSIONER FRIEL'S DECISIONS		
1439	Leduc, Mrs. Angelina	313 00	313 00
		1,560 50	1,560 50

DECISION

Case 1435

Re WILLIAM A. COCKBURN

This is a claim for the sum of $400.00 being the value of a trunk and contents belonging to the deceased son of the claimant, who was killed in action with the Royal Flying Corps.

At a sittings held before me at Toronto, May 7, 1924, the solicitor for the claimant appeared and stated that no other information could be given than that already on file.

It appears that this trunk was being transferred from London by the Director of Military Estates, to the Ottawa Military Directorate and went down with the ss. *Medora* which was sunk on May 4, 1918, by enemy submarine.

The Deputy Commissioner, who at the time of this loss was Director of Military Estates, at Ottawa, corroborated the claim.

In view of this, I allow it at the amount stated, namely $400.00, and to which I think should be added interest at the rate of 5 per cent per annum from the 10th day of January 1920 (the date of the Ratification of the Treaty of Peace), to the date of settlement.

WM. PUGSLEY,
Commissioner.

DECISION

Case 1436

Re MRS. ANNA DURIE

This is a claim for loss of personal effects of the deceased Captain W. A. P. Durie which were being shipped from England by the Military Authorities to the Director of Military Estates at Ottawa, and which were lost due to the torpedoing of the vessel conveying them in April, 1918.

The amount of the claim is for $349.50.

At a sittings held before me at Toronto on May 7, 1924, the claimant appeared and gave evidence. She verified the list of belongings and there is on file a letter from the Assistant Director of Military Estates confirming the loss of these belongings.

I allow this claim at the amount stated, namely, $349.50, to which I think interest should be added at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles (January 10, 1920) to the date of settlement.

WM. PUGSLEY,
Commissioner.

DECISION

Case 1437

Re MARCELLA G. WOOD

This is a claim on behalf of the Estate of Flight-Lieutenant Frank A. Wood, deceased, who lost all personal effects which were being forwarded by the Military authorities from England to Canada and which were lost by enemy action in the sinking of the vessel carrying them, the name of which is not given.

The amount of the claim is $275.00.

There is on file a certificate from the Assistant Director of Military Estates confirming this loss.

At a sittings held before me at Toronto on May 14, 1924, Mrs. Wood appeared and stated she is a resident of Toronto and was born in the Province of Quebec. Her deceased son was born in Toronto and killed while on active service in 1918. His personal effects were being transferred to Canada by the Military authorities who did not state the name of the vessel but merely certified as to their loss. A list of the effects on file consists of a trunk and club bag and contents amounting to a total of $275.00 and the claimant stated her deceased son had left all his property to her by will.

I allow this claim at the amount stated, namely, $275.00, and to which I think should be added interest at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Versailles January 10, 1920, to the date of settlement.

WM. PUGSLEY,
Commissioner.

DECISION

Case 1438

Re MRS. EDITH D. JARVIS

Claimant is a Canadian. She claims on account of the loss of a trunk and personal effects of her brother, Lieutenant George MacDonald Dick, deceased, shipped from England to Canada and lost when the ss. *Medora* was sunk May 2, 1918. Deceased left no will and administration of his estate was not taken out. He left his mother, since deceased, claimant and another sister.

The claim will be allowed, in so far as it covers effects not of a military nature, and I think $223.00 will be fair compensation, with interest at 5 per cent per annum from the date of the sinking of the ship, May 2, 1918, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9), and I find $223.60 is fair compensation to the claimant Mrs. Edith D. Jarvis, with interest as above indicated.

JAMES FRIEL,
Commissioner.

OTTAWA, September 10, 1926.

DECISION

Case 1439

Re MRS. ANGELINA LEDUC

Claimant is a Canadian. The claim is on account of damage to goods and personal effects at one time belonging to her son Lieutenant J. C. R. Leduc of the Royal Flying Corps, Imperial Service. He was in training at Dartford, England. Expecting to leave for France, he packed his effects, including clothing and different articles in a trunk and placed the same for shipment home to his mother. There was no insurance.

He was killed May 7, 1917. The trunk was shipped by the Military authorities on the ss. *Medora* which was sunk by enemy submarine May 2, 1918. The trunk went down with the ship but after a time floated, but it and the contents were so damaged, that it was practically of no value.

This claim received consideration before the late Commissioner at Ottawa, May, 1923, and he noted it for allowance at the amount claimed, $313.00, and I agree with this amount, and would add interest at the rate of 5 per cent per annum from the date of loss, May 2, 1918, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9), and I find $313.00 fair compensation to the claimant with interest as above indicated.

JAMES FRIEL,
Commissioner.

November 9, 1926.

CLASS J

COMMISSIONER FRIEL'S DECISIONS

BUSINESS LOSSES IN CANADA DUE TO WAR

Case No.	Claimant	Nature of Claim	Amount Claimed	Decision
			$ cts.	$ cts.
1440	Battle, James	Curtailment of electric power	2,394 00	Dismissed
1441	Cowan, Fred. H.	Unable to sell German goods	25,000 00	"
1442	Fabrique de Beauport	Church destroyed by fire, German agents suspected.	75,000 00	"
1443	Gowans Kent Limited	Goods paid for in Germany and not shipped.	189 77	"
1444	Smith, Estate of John T.	Loss in connection with coal mine rights	25,000 00	"
1445	A. Vogel & Co	Business losses of a German concern in Canada	Not stated	"
1446	Crown Cut Glass Co	Unable to get supplies from Belgium	27,500 00	"
1447	National Steel Car Corp. Ltd.	Loss on contracts due to sinking SS "King George" December 8/18.	2,796,700 96	"
1448	Peabody Limited	Damage to plant by explosion	1,000 00	550 00
			2,952,784 73	550 00

DECISION

Case 1440

Re JAMES BATTLE

Claimant is a Canadian. His claim is for losses sustained by him through curtailment of electric power during the year 1918. This is a claim for indirect damage due to ordinary war conditions, and not directly attributable to enemy action. It does not come within the scope of this Commission, or any of the categories of the Treaty, and is therefore disallowed.

July 8, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1441

Re FRED. H. COWAN

This claim is for loss of business owing to the war. Claimant had made a contract with a New York concern to sell goods for them and the business was stopped by the war. It is a case of ordinary loss of business due to war conditions and not of damage by direct enemy action.

The claim is disallowed as it does not come within any of the categories of the First Annex to Section (I) Part VIII of the Treaty of Versailles.

August 2, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1442

Re FABRIQUE DE BEAUPORT

This claim was filed by Edmond Giroux, Esq., Mayor of the town of Beauport, P.Q., church warden of the Parish of the same name, and is in respect to the destruction by fire of their church building. There is nothing in the record to connect the regrettable destruction of this very fine building with enemy action. In the claim itself it is stated that the cause of the fire is unknown. The claim is not pressed. For the purposes of this record it is disallowed.

This claim does not come within any of the categories to section (I) Part VIII of the Treaty of Versailles, and is therefore disallowed.

July 7, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1443

Re GOWANS KENT LIMITED

Claimants are a Canadian corporation, a subsidiary company of Cassidy's Limited of Montreal.

This claim is on account of monies paid for goods bought from a concern in Germany and paid for but never shipped.

Claimants were heard by the late Commissioner in Montreal.

The claim is not one for this Commission. It was, apparently, left out of account in business of Cassidy's Limited, with the Clearing Office.

Claim is disallowed.

August 7, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1444

Re ESTATE OF JOHN T. SMITH

This claim arises out of the loss of the sale of certain coal mine rights and equipment at Cumberland County, N.S., a contract for the purchase of which had been entered into with a resident of England, for the sum of $150,000.00. Owing to the outbreak of war the deal could not be completed and Mr. Smith was obliged to sell at a sacrifice, involving a loss of $25,000.00, which is the amount of the claim.

At a sittings held at Amherst before the late Commissioner the case was mentioned by a solicitor. It was stated that the claim was filed in 1918 and the claimant died 1921 intestate. No administration was taken out.

The Commissioner pointed out that this claim could scarcely come within any of the categories of Annex (I) to Part VIII of the Treaty of Peace, but he would allow a reasonable opportunity for any person interested to present evidence and argument.

The claim has not been pressed.

January 9, 1926

JAMES FRIEL,
Commissioner.

DECISION

Case 1445

Re A. VOGEL & COMPANY

This claim does not seem to have been formally presented but from what was said by a representative of the company at the sittings of the Commission in Montreal, October 10, 1925, it seems to have been one for loss of business due to claimants' being a German concern, trying to carry on in Canada during the war.

For the purposes of the record, this claim is disallowed.

August 7, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1446

Re CROWN CUT GLASS COMPANY

The claimant company was established in the spring of 1912 for the purpose of manufacturing cut glass here. They were obliged to suspend business in 1915 as a consequence of the war. They procured their own material, that is rough glass from Belgium through a German concern in Berlin and shipments, of course, were stopped. Owing to the fact that the company was unable to secure this raw material to enable them to carry on business, they were forced to close down.

The claim was heard by the late Commissioner, who gave his decision to the claimants to the effect that their claim did not come within his jurisdiction, as it did not come within any of the categories of the First Annex to Section (I) Part VIII of the Treaty of Versailles and he noted it for disallowance.

I agree with this decision and the claim is disallowed.

November 4, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1447

Re THE NATIONAL STEEL CAR CORPORATION LIMITED

Claimants are a Canadian corporation, incorporated under the Dominion Act.

The declaration of the President of the National Steel Car Corporation Limited, dated June 16, 1923, giving the grounds on which the claim is based as "the sinking of two ships chartered by claimant for delivery of car equipment in France, by enemy submarine."

The National Steel Car Corporation Limited, assume to be assignees of the claim of the National Steel Car Company Limited, but the record does not show how.

The case was heard before the late Commissioner at Ottawa, May 31, 1924, and was then stated by claimants' counsel as follows:—

I appear with Mr. Levy, K.C., and Mr. Inch of Hamilton, for the claimant, the National Steel Car Corporation, Limited. The National Steel Car Corporation had taken two contracts dated in November and December, 1915, for the construction of some four thousand freight cars for the Paris, Lyons and Mediterranean Railway in France. The cars were to be shipped, not assembled, and were to be assembled in France. The works of the company are at Hamilton, and there were some initial difficulties in connection with the mechanical construction which delayed the commencement of the work on the contracts for some six months after the contracts were taken; but by the end of 1916, the company was getting up to the maximum production. In order to provide for the shipment of material which was being undertaken according to the contract by the National Steel Car Corporation, Limited, they had chartered three vessels—the *King George*, the *Doonholm* and the *Camlake*, and their work on the cars had been laid out in such a way as to provide for the fulfilment of the contract according to some modifications that had been made extending the time for completion in certain instalments up to the month of October in 1917. The construction of a large number of cars, of course, involves a steady inflow of material and it also involves a steady outflow of output, and the company had made their plans upon the footing that they would be able to continuously ship the necessary quantities of output from Philadelphia to France and they required the services of those three vessels for that purpose. Just as they had reached the maximum output, about the 8th December, 1916, the *King George* was sunk by the Germans. She was on a westerly voyage at the time, so that she was not in fact carrying any cargo in which the company was interested; but she should have been available to leave Philadelphia not later than the end of December or the beginning of January with the car loads that were being provided at Philadelphia. The company had leased a pier at Philadelphia for the purpose of carrying out this contract and they had a certain amount of storage capacity, but that was necessarily limited because their calculation proceeded on the assumption that the shipments would follow regularly. The result of not being able to ship on the *King George* was that they could not ship the material from Philadelphia. Not being able to ship from Philadelphia, they could not clear their yards. Their yards being full of the completed material which should have been shipped out, they found that they were unable to accept deliveries of the incoming raw material, and the result of that was, in short, to create such a congestion that the company was unable to fulfil the contracts. They incurred very substantial penalties to the railway company under the contracts because the deliveries were ultimately extended until the month of October, 1918, and in addition to that, they had to pay higher prices for some of the raw material which they had bought for this contract and which they had been unable to take delivery of. They suffered from the necessary rehandling of a good deal of the material in the course of storing it in their yards, and altogether the whole operation, instead of proceeding according to program, got into a state of confusion which ultimately resulted in a very heavy loss. The condition of the shipping market at the time was such that they could not replace the *King George* since it was sunk and that necessitated their doing the best they could with the remaining two ships. The *Camlake*, one of those two ships, ran aground in the middle of 1917. We are not making any claim in that respect, because while she ran aground probably in consequence of the diversion order which she had received from the Admiralty, the underwriters on investigating, decided that she was a marine loss and not a war loss, so that we are not presenting that to you. That occasioned considerable loss at the latter end of the contract, but that part of the loss we are not including in our claim. I mention that because, in preparing the figures, the accountants have, of course, been confined to the books of the company and we will present to you a statement showing the actual cost of completing the contract and the actual result to the

company, an estimated cost which the company believes it could have completed the contract for but for the three circumstances I have mentioned, that is the initial delay in the mechanical matter in respect of which we make no claim, and the subsequent loss of the *Camlake* in respect of which we will make no claim, but we will, so far as we can, subdivide the total losses, showing what part is attributable to the loss of the *King George*.

Witnesses were then examined and documents filed in support of the claim.

Dr. Pugsley said at the end of the hearing, that he thought the company had a real substantial claim for the destruction of the chartered vessel and that claim comes within paragraph 9 of the Annex I to Part VIII of the Treaty as being an injury to property. The question is: "What are the consequences of that wrong fairly rising from it?"

Later he filed and delivered judgment in which after stating the facts as proved he says:—

"I am satisfied from the evidence that the damages caused to the claimant company as represented by such other items can be fairly and directly attributed to the sinking of the King George, the loss of her services in connection with the performance of the contracts; and the inability of the claimant company to replace her at the time when her services were absolutely essential to enable the company to complete its contracts within the specified times."

The items referred to and allowed by him, are as follows:—

Excess Actual Cost of Material	$ 150,800 00
Excess cost of direct labour	180,395 39
Excess cost of operating expenses	293,955 20
Excess cost of administrative expenses	120,456 61
Excess sales expenses	10,394 63
Indemnities of penalties paid for non-delivery	131,067 60
Excess Ocean Freight expenses	57,720 00
Excess pier rental	11,804 74
Excess inland freight to Philadelphia	10,118 82
Storage charges	2,183 91
Excess interest	254,636 29
	$1,223,533 10

The judgment proceeds to say:—

"The items of the claim which I allow, are I think, the direct result of the sinking of the King George and it seems clear to me that Germany, as a wrongdoer, having destroyed the King George, which was chartered expressly for the transportation of railway cars under binding contracts for delivery at specified times, must be held liable for the damages directly resulting from the wrongful act. In this case the wrongdoer must have been presumed to have anticipated that damages of this nature might reasonably arise from destruction of this vessel. When first considering this claim, I had some doubt as to whether or not, because of the assumption which might be reasonably made that to a greater or lesser extent, these cars might have been intended to have been used in connection with the war, it might debar the claimant from recovering damages under the Provisions of Annex (I) of Part VIII of the Treaty of Versailles, which provides that "Compensation may be claimed from Germany under Article 232 above in respect of the total damage under the following category."

Category (9):—

"Damage in respect of all property wherever situated belonging to any of the Allied or Associated States or their nationals, with the exception of Naval and Military works or materials which has been carried off, seized, injured or destroyed by the acts of Germany or her allies on land, on sea or from the air, or damage directly in consequence of hostilities or of any operations of war."

"On full consideration, however, I am of the opinion that as the vessel destroyed, (i.e. the King George) was a merchant vessel, chartered to carry railway cars, which might or might not be used for war purposes, it cannot be said that the ship which was destroyed could be classed among either Naval or Military works or materials and consequently all damage caused directly to the claimant company as a result of the destruction of the vessel, is recoverable under this category."

I think that interest should be added to the above amount, at the rate of 5 per cent per annum from the date of the ratification of the Treaty of Peace, January 10, 1920 to the date of settlement."

The damages for which the late Commissioner proposed to make the award mentioned, are indirect, consequential and remote and do not come within the scope of this Commission. That being my opinion, I am not checking over the different amounts to see whether they are correct and fair as damages of the kind. They are of such nature that in my opinion they may be disallowed without further study.

The Reparation Commission, constituted under the Treaty of Versailles, and expressly clothed with authority to interpret the Treaty, in construing paragraph 9 held that it does not authorize claims for compensation for the loss of enjoyment or of profit from the property affected or for supplementary expenses incurred in order to get the advantages which normally would have been obtainable from the property.

The report of the British authorities in submitting the British Reparation Account to the Reparation Commission recites that:—

"In calculating the amount of damage in each case only damage caused by specific acts of Germany and her allies, or damage directly in consequence of specific hostilities or specific operations of war, has been included, and indirect and consequential damage has been excluded."

In connection with the item in the British account for damages, "by air raid or bombardment from the sea", this explanation is made:—

"All cases of indirect and consequential damage have been rejected, as well as those cases in which there is no clear evidence that damage was due to an act of aggression by the enemy. . . . Claims in respect of loss of business, profits, good-will and other consequential damage of a like nature have been excluded."

The British Royal Commission on compensation, (Lord Sumner, Chairman) in their first report, paragraph 23, say:—

. . . "The Commission have felt bound to apply the legal rules as to remoteness of damage and particularly to disallow losses which arise only from the existence of a state of war, where the liability to loss is common to all your majesty's subjects though in the particular case it may have fallen more heavily on the claimant than on others."

Claimants say they could not replace the ship. I am not satisfied as to that. The records in other cases before the Commission show that vessels were bought during the time 1916 and 1917. Ships were bought and sold and chartered. It does not matter, however, for the purpose of this decision if they could not replace the ship. That was due to war conditions. Their contracts in the first place were due, no doubt, to war conditions. I do not propose to formulate any opinion as to whether the cars were military works or materials, I do not think it necessary to do so. The cars, whether they were military works or not, were not destroyed.

With reference to the words "damage directly in consequence of hostilities or any operations of war" the British Royal Commission directed their Reparation Claims Department that those last words of paragraph (9) must be read with the whole paragraph as referring to property. The whole subject is fully discussed in the Administrative Decision No. 7, of the Mixed Claims Commission, United States and Germany, dealing with claims for loss of earnings or profits and for loss or damage in respect of intangible property.

In that opinion Judge Parker said:—

"It cannot be doubted that the makers of, and the principal beneficiaries under, the Treaty of Versailles construed its reparation provisions dealing with damage to property as limited to physical or material damage to tangible things. But two or more different estates or interests in a tangible thing may exist at the same time, the sum of which equals a full, complete, absolute, unconditional, and unencumbered ownership of the whole. It is important to avoid confusing the nature of the damage to a tangible thing with the nature of the estates or interests in that tangible thing which was damaged or destroyed. It can in legal contemplation have but one value but several estates or interests may inhere in it. Neither can it be doubted that in the preparation of their reparation claims the Allied Powers have in measuring the damages resulting from the physical injury to or destruction of tangible property, excluded all claims for the loss as such of prospective profits of business and of prospective earnings, salaries, wages and the like."

Citing the leading English case on charterers' rights (De Mattos v. Gibson 4 De Gex & Jones, p-276) and case of the Aquitania (1920) 270 Federal Reports 239 Mr. Justice Parker continues:—

"As applied to the loss of tonnage the tangible things destroyed are ships. The value of their use at the time and under the conditions then existing has been taken into account by this Commission as a factor in determining the market value of tonnage lost. Where, under the terms of a then existing charter-party, the charterer was at the time of the loss entitled to the use of the ship on terms which would have had the effect of reducing the price which the owner could have obtained for it if sold burdened with the charter, then at the time of the loss the charterer had a pecuniary interest in that particular ship, a jus in re, a property interest or property right the subject matter of which was the ship, an interest entering into and inhering in the ship itself. Such a right and interest is an encumbrance on the ship in the sense of constituting a limitation on the owner's right to possess, control, and use it and as affecting the price at which it could be disposed of in the market burdened with the charter. It is an interest in the subject matter which the municipal courts will protect against both the owner and those claiming under him with notice thereof. In cases where such interest existed at the time of the loss the measure of damages remains unchanged but the market value of the whole ship must be apportioned between the owner and the charterer in proportion to their respective interests therein."

There is nothing in the record in this case to indicate the value of the ship lost or the interest that could be measured in a financial way of the charterers. The charter covering the King George is dated March 28, 1916, and includes also two other ships, the *Doonholm* and *Cambrian King*, the three of them chartered to carry full and complete cargoes of railway wagons packed in crates in sections for account of the Paris Lyons and Mediterranean Railway and French Government from New York to Marseilles or La Seine, France, for $215.00 per wagon.

If the charter rate was lower than the current rate for vessel freights at the time, claimants would have an interest in the value of the ship and would be entitled to compensation in respect of that interest.

I would disallow this claim as presented as it does not come within any of the categories of the First Annex to Section (I), Part VIII of the Treaty of Versailles, without prejudice, however, to considering a substitute claim in respect of the claimants interest in the ship as charterers, if any, under the conditions herein set forth.

JAMES FRIEL,

January 21, 1927. ——— *Commissioner.*

DECISION

Case 1448

Re PEABODY LIMITED

This claim is on account of damage to the property and buildings of the claimant company and for loss of time caused by an explosion of dynamite at their plant in Walkerville, June 21, 1915.

The record shows that the attempt was made by German agents, financed by German money. Claimants were then making uniforms. Rispa, who placed the dynamite, was sent to the penitentiary; the principal agent, Kaltschmidt, escaped and was afterwards tried in Michigan and convicted of the offence of conspiracy in connection with the attack on the Peabody plant and other attempts.

The property destroyed was not military works or materials.

I would allow for damage to the property, the amount claimed, $550.00, but not for loss of time, which is not a direct damage.

The claim has been assigned to The Canadian Bank of Commerce.

This claim comes within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9), and I find $550.00 fair compensation to the claimants, now represented by The Canadian Bank of Commerce, with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

JAMES FRIEL,
Commissioner.

June 28, 1926.

CLASS K

Commissioner Friel's Decisions

STEAMSHIP LOSSES

Case No.	Claimant	Name of Vessel	Amount claimed	Decision
			$ cts.	$ cts.
1449	Imperial Oil Co., Ltd.	"Palacine," Dec. 2/16	1,201,470 00	Dismissed.
1450	International Petroleum Co., Ltd.	"Luz Blanca," Aug. 5/18	2,123,840 00	"
1451	Pontiac Steamship Co.	"Pontiac," April 20/17	294,120 30	"
1452	Rolph Estate—Ship Drummuir Co., Ltd.	"Drummuir," Dec. 6/14	28,077 28	"
1453	St. Lawrence Shipping Co., Ltd.	"Morwenna," May 26/15	201,100 00	"
1454	Hero Shipping Co., Ltd.	"Scottish Hero," June 10/17	760,000 00	"
1455	Turrett Steamship Co., Ltd.	"Turrett Court," requisitioned	89,334 46	"
1456	Cape Steamship Co., Ltd.	"Turrett Cape," requisitioned	94,037 04	"
1457	Canada Steamship Lines Ltd.	"Midland Queen," Aug. 4/15	5,454 00	Nil.
		"Empress of Fort William," Feb. 27/16.	299,333 35	109,333 35
		"Empress of Midland," Mar. 27/16	299,333 35	109,333 35
		"Dundee," Jan. 31/17	158,044 43	Nil.
		"Strathcona," April 13/17	177,606 67	"
		"Neepawah," April 22/17	56,800 00	"
		"C. A. Jacques," May 1/17	186,000 01	"
		"D. A. Gordon," Dec. 13/17	321,649 50	107,649 50
		"Armonia," Mar. 15/18	367,318 67	Nil.
		"Tagonia," May 16/18	22,100 00	"
		"Acadian," Sept. 16/18	246,040 00	"
1458	SS. Eretria Co., Ltd.	"Eretria," May 13/16	676,968 06	227,268 06
1459	National Fish Co., Ltd.	"Triumph," Aug. 30/18	282,893 33	14,556 00
1460	Overseas Shipping Co., Ltd.	"Briardene," Dec. 1/16	1,000,000 00	100,000 00
1461	Marine Construction Co. of Canada, Ltd.	"Dornfontein," Aug. 2/18	95,000 00	50,000 00
1462	Department National Defence.	"Llandovery Castle," June 7/18	3,606,094 59	No action.

Case No.	Claimant	Name of Vessel	Amount of Claim	Decision
			$ cts.	$ cts.
1463	Dominion Coal Co., Ltd.....	1. Loss through requisition.....	1,065,310 50	Dismissed.
		2. Cost of chartering to replace above.	1,791,213 27	"
		3. Losses re contract N.E. Coal & Coke Co.	1,303,109 24	"
		4. Loss "Kendall Castle," Sept. 15/18.	791,301 00	100,000 00
		5. Loss "Stigstad," Nov. 10/16...	899,712 00	246,000 00
1464	Dominion Iron & Steel Co., Ltd.	"Sandefjord," substitution..... "Fram," increased freight.....	93,878 72	Disallowed.
1465	Nova Scotia Steel and Coal Co., Ltd.	"Storstad," sunk Mar. 8/17.....	1,066,080 00	300,000 00
		"Tellus," sunk Aug. 31/16.....	4,586,549 50	300,000 00
		"Themis," sunk Oct. 12/17.....	1,689,844 80	Disallowed.
		"Wacousta," sunk Nov. 8/15.....	1,065,926 40	105,000 00
		"Fimrelte".....	74,360 00	Abandoned claim.
		Less insurance $617,829.80 on the "Tellus," "Themis," "Wacousta" and "Fimrelte."		
		Net claim.....	6,798,850 00	
			20,402,433 56	1,769,140 26

DECISION

Case 1449

Re IMPERIAL OIL COMPANY LIMITED

This company was incorporated by Dominion of Canada Letters Patent, September 8, 1880.

The claim as declared, December 29, 1921, is for the:—

Loss of the steamer *Palacine*	$1,095,800 00
Charter hire	50,880 00
War risk insurance 3 per cent for 90 days	54,790 00
	$1,201,470 00

The *Palacine* was captured and sunk by enemy submarine, December 2, 1916, 18 miles from Ushant, while on a voyage from New York to Cherbourg, with a cargo of lubricating oil.

She was built in 1904 and was of 5,479 tons dead weight tonnage and 3,286 gross tonnage. She was bought by the claimants in April, 1915, for £51,000 and immediately chartered to the Standard Oil Company of New Jersey for five years at $2,040.46 per calendar month or $24,485.52 per annum, equal to a little over 2 per cent on claimed value. The charterers had to insure for £51,000 and did insure for £90,955-11-9. Indemnity was collected from insurance companies in the sum of $433,289.72 which is equal to $79.00 per ton dead weight or $132.00 per ton gross tonnage.

Considering testimony in other cases and general information before us including prices given by Lloyds Calendar, 1923, for sale of British vessels from 1914 to 1919, not to foreign owners, and considering for instance the case of

the ss. *Pontiac* requisitioned by the British Government who put valuators on and settled with the owners when she was sunk, April 29, 1917, at $80.00 per ton dead weight, it is my opinion that the indemnity received in this case amply covered all interests in the *Palacine* purchased the year before her destruction at $46.50 per dead weight ton. The charter hire or prospective earnings and the war risk insurance premium both being matters of indirect damage are not allowed under any circumstances. In this case the war risk premium was paid by the charterers, American nationals who would have no rights before this Commission.

Outside of the question of valuation altogether, it seems to me that claimants have put themselves out of court. Immediately that they acquired the ship they chartered it for 5 years to the Standard Oil Company of New Jersey, "The Jersey Company" as it is termed by witness Nichol. We may fairly assume that in this business the Toronto company is also Standard Oil, and that the transaction was by way of a device to transfer the income from the ship to the United States.

The charter hire represented interest and depreciation only. Freights were then three times as great as in 1914 and were still mounting. The Standard Oil Company got all the benefit. It is hardly likely that, tied up with such a charter, the ship itself would have even the relatively small market value for which it was purchased. The charter ran for a period, which as it happened, carried until after the war and to a time when prices began to fall. Under the charter, as the witness, Nichol, said, it is provided that the charterer had to replace the boat, "and, of course, the value is only $235,000.00." That was the value claimants received, the book value of the vessel. "As long as we got the hire," said claimant's witness, "it is only the interest and depreciation value. They had to cover the insurance and give us back our investment. That is what it amounts to."

Claimants got their hire which covered interest and depreciation, and they got their investment back at book value—what more is there to it, unless the Canadian authorities decide to look into the matter of taxes?

I would disallow this claim. In its nature it comes within the First Annex to Section (I), Part VIII of the Treaty of Versailles, category (9), but I find the claimants are not entitled to any compensation over and above, and in addition to, the amount of indemnity they collected.

JAMES FRIEL,
Commissioner.

July 15, 1926.

DECISION

Case 1450

Re INTERNATIONAL PETROLEUM COMPANY, LIMITED

This claim and that of Imperial Oil, Limited, with reference to the ss. *Palacine*, were heard before the late Commissioner and the Deputy Commissioner at Toronto, May 16, 1924.

Claimants were incorporated in Canada. Their claim is in respect of the loss of the tank steamer *Luz Blanca* which was sunk by enemy submarine August 5, 1918, 35 miles from Halifax, while bound from that port, in water ballast, to Tampico, Mexico. The claim is as follows:—

Loss of Steamer	$1,725,000.00
Loss of Profits, August 15, 1918, to December 31, 1919	348,840.00
War Risk Insurance	50,000.00
Total	$2,123,840.00

This ship was built in Newcastle-on-Tyne, England, in 1913, and was of 6,000 tons deadweight tonnage, and 4,868 tons, gross tonnage. Claimants received $1,000,000.00 indemnity from the Insurance Underwriters, equal to $145.00 per deadweight ton nearly, and $205.41 per gross ton. The original cost of the vessel to the Company was $437,400.00, equal to about $63.40 per deadweight ton, and $90.00 per ton gross tonnage.

Earnings were given for the period January 1, 1918, to August 5, 1918, date she was torpedoed. During that time—

the freight earnings were	$326,026.00
Operating expenses	178,271.00
leaving a profit for 216 days of	$147,755 00

or at the rate of $684.05 a day.

Details were not given of operating expenses, but we may assume that they included insurance premiums and taxes.

Evidence was given as to sale prices at different times. The Norwegian scale of prices was referred to. That scale covered neutral vessels. Shipping under the United States flag until April 6, 1917, was also neutral. The Japanese market was affected by peculiar conditions. Circumstances in respect of sales mentioned by Mr. Martin naturally could not be ascertained. He said, among other things, that a man with a cargo on the dock would pay anything for a tonnage. Mr. Rahlves, claimants' witness, said something similar. I have just read the American case of the ss. *Chemung* decided before the Mixed Claims Commission. I refer also to Lloyds Calendar 1923, page 361, "Throughout 1918, however, the prices paid for British tonnage varied only a little. For example, vessels of 8,000 tons, about seven years old, sold in January and December at about £18 to £18 10s. per ton deadweight; vessels of 5,000 tons, 16 years old, for £13 to £14 per ton deadweight; and vessels of 3,500 tons, of about the same age, at about £16 to £17 10s." Also other sales referred to on pages 363, 365 and 367. In 1915 the claimants same management bought the *Palacine* for $40.50 per deadweight ton. In 1917 they contracted for two tank steamers at $100.00 per ton, to be delivered in August, 1918. The contractors could not do it owing to the rise in price of materials and labour, but the contract price indicates fairly the value of a new boat in 1917. In 1918 and 1919 phenomenal sums were being paid for tonnage, particularly by neutral owners, owing to the high rates of freight which the absence of Government control enabled them to obtain. Values fell 40 per cent in 1919, and went to pieces in 1921.

I would take it that the *Luz Blanca* in the beginning of 1916 was worth about what the Company paid for her, but there is margin enough if she was worth more. Claimants received 228 per cent on what the vessel cost them. There is no such general increase of values, or anything near it, shown in the sales of British ships during that time. I think that the amount of insurance money received fully compensated for all interests in claimants' ship at the time she was destroyed. Claim for loss of profits and war risk insurance, which are indirect damages, are not recognizable by this Commission.

I would disallow this claim. In its nature it comes within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9), but I find the claimants are not entitled to any compensation over and above, and in addition to, the amount of indemnity they collected.

JAMES FRIEL,
Commissioner.

July 16, 1926.

DECISION

Case 1451

Re PONTIAC STEAMSHIP COMPANY

Claimants are a Canadian Corporation. Their claim is on account of the loss of the steamer *Pontiac*, sunk in the Mediterranean Sea without warning by a German submarine April 28, 1917. They claim also to be reimbursed for war risk insurance premiums paid on their vessel in the years 1914 and 1915. This latter part of the claim does not come within the meaning of direct damages. The expenses for war risk insurance are in no sense losses, damages or injuries caused by the enemy's act within the meaning of the Treaty. The owners in the exercise of business prudence bought and paid for insurance against their losses. The war risk insurance was a heavy expense, but perfectly justified and covered by the enormous increase in freight rates. It is not a damage that can be considered by this Commission.

In respect to the ship *Pontiac*, this steamer was under requisition by the British Government at the time it was destroyed, and the British Admiralty settled with the owners for the amount of the indemnity. The Admiralty had agreed to assume the war risk. The *Pontiac* was built in 1903, her tonnage was 3,345 tons gross and 5,700 tons dead-weight. The ship was requisitioned in the early part of 1916, but the British Government released her for several profitable voyages. She had been repaired in February, 1917. She was an extraordinarily well built ship, cost $170,000.00 to build, equal to about $30.00 per dead-weight ton. The British Government paid the owners $462,000.00, or on a valuation of $80.00 per dead-weight ton. "They had valuators of their own whom they called. They made us this offer and it was a question of taking it or arbitrating it." I think that settles the matter and the claimants have no claim for further compensation that can be recognized by this Commission.

The claim in respect of war risk insurance does not fall within the Treaty.

In respect of the loss of the ship, it does fall within the Treaty, but the claimants have already been compensated by the British Government.

Claim disallowed.

JAMES FRIEL,
Commissioner.

DECISION

Case 1452

Re ESTATE OF AUGUSTUS P. ROLPH

This claim arises out of the loss of the British ship *Drummuir*, 1,798 tons, of Victoria, British Columbia, which sailed from Swansea, September 19, 1914, with a cargo of coal bound for San Francisco, California, and was captured by the German fleet, sixty miles northeast of Cape Horn, in the Atlantic Ocean, looted and sunk on December 6, 1914. The vessel was owned by the Ship *Drummuir* Company, Limited, a Canadian corporation, all of whose capital stock was in the hands of Hind, Rolph & Co., Inc., shipping people in San Francisco. The shareholders were all Americans and only enough shares were allotted to Canadians to qualify them as directors. The *Drummuir* was a four-masted iron sailing ship, built in 1882. At the time of loss the vessel, hull, equipment, stores, etc., was valued at £8,511.18.8. The owners received £2,766 war risk insurance, leaving the sum of £5,745.18.1 to represent the loss sustained by them through the sinking of the *Drummuir*.

After the loss of the vessel it was decided to wind up the Ship *Drummuir* Company Limited, and this was done but before doing so an assignment from

said company to Augustus P. Rolph, of London, England, was made and the assignment transferred and set over unto him, his executors, administrators and assigns, any and all claims of whatsoever kind, character or description that it, the said the Ship *Drummuir* Company Limited has or ever had against the Empire of Germany, its representatives, agents or any other people, princes or rulers, or persons whatsoever for or by reason of promises, and all the rights, titles, interests, claims or demands whatsoever, of, in, to or arising out of, the taking and sinking of the said ship *Drummuir*, her cargo, stores, boats, tackle, apparel or furniture.

This assignment was dated at Victoria, British Columbia, May 4, 1916, and the consideration mentioned was $238.00. The said Augustus P. Rolph of London, England, was then acting as the agent for Hind, Rolph & Co., Inc., holders of the capital stock of the *Drummuir*. He died May 15, 1917, leaving a will in which he devised and bequeathed all his property to his wife, Sarah Eliza Rolph, and appointed her executrix, and she duly proved the will.

This claim was filed by Mrs. Rolph. It was presented to the Reparations Department of the British Board of Trade in 1921, who notified claimant that the claim properly appertained to Canada and passed it on to this Department.

I do not think that the claim belongs to Canada. The property destroyed was not impressed bona fide with Canadian nationality; the actual owners were Americans and their recourse if they had not assigned the claim would have been to their own Government.

I would disallow the claim.

January 21, 1927.

JAMES FRIEL,
Commissioner.

DECISION

Case 1453

Re St. Lawrence Shipping Company, Limited

The claimant is a Canadian company incorporated under the Nova Scotia Joint Stock Companies Act. They claim on account of the loss of their steamer the *Morwenna* (Montreal registry), sunk by a German submarine in the Irish Sea May 26, 1915, while proceeding to Sydney from France. The *Morwenna* was a cargo and passenger boat of 1,414 tons gross tonnage and 1,300 tons deadweight tonnage built in England in 1904. Insurance was collected to the amount of $121,532.42, equal to $93.50 per deadweight ton or about $86.00 per gross ton.

Mr. Harling, one of the claimant's experts, whose values in other cases I am discounting a great deal, knew about this boat. He said she was never intended for ocean trade but for the British coasting trade. Her original cost would be about £15,000. She was bought by Canadians, brought across the Atlantic under favourable conditions, and used on the lakes. Her owners, after the war broke out, refitted her and sent her across. He valued the boat at the time of her loss at $125,000.00. She could have been replaced for between $100,000.00 and $150,000.00. He mentioned three boats that could have been bought at the time for a very little over $50.00 a ton.

The claim comes within category (9) of the Annex, but considering Mr. Harling's evidence and the evidence in other cases, the prices for ships sold at the time in England mentioned in Lloyd's Calendar and Fairplay, the settlements made by the British Admiralty for vessels lost while under requisition, and some of the American awards, I am of the opinion that the amount of the insurance collected fully covers the claimant's loss. The claim is therefore disallowed.

February 17, 1927.

JAMES FRIEL,
Commissioner.

DECISION

Case 1454

Re HERO SHIPPING COMPANY, LIMITED

The claimants are a company incorporated under the Nova Scotia Joint Stock Companies Act. They claim on account of the loss of the steamer the *Scottish Hero* (Montreal registry), sunk by enemy submarine in the Irish Sea, June 10, 1917, while proceeding to Sydney from France.

The claimants collected $261,250.00 insurance under the British Government War Risk Scheme (equal to $68.75 per deadweight ton or $114.00 per gross ton) to which was added $4,154.75 interest. This ship was built in 1895, deadweight tonnage 3,800 tons, gross tonnage 2,204 tons.

Mr. Harling operated the vessel in 1903. She was sold that year with a lot of other vessels of the same type to the Canadian Lake and Ocean Navigation Company of Toronto for what she had originally cost, about $100,000.00, and was used as a grain carrier. "Before the war," witness said, "anybody could have had the vessel for $50,000.00. That would be all she was worth. At the time of the war, of course, a big change took place. In 1917 this vessel's value would be anywhere from $200,000.00 to $250,000.00, the latter sum being the outside," and witness says, "he would consider that an extraordinary value for a vessel of that kind". He was figuring at five times what he considered she was worth immediately before the war when she would be anywhere around 15 years old. Asked what she would be worth after the war, he said "Nothing. I would not have her as a gift". The life of such a vessel is about twenty years.

This claim comes within category (9) of the Annex, but considering the age of the ship, Mr. Harling's evidence and the evidence in other cases, the prices for ships sold at the time in England mentioned in Lloyd's Calendar and Fairplay, the settlements made by the British Admiralty for vessels lost while under requisition, and some of the American awards, I am of the opinion that the amount of the insurance collected fully covers the claimant's loss. The claim is therefore disallowed.

JAMES FRIEL,
Commissioner.

February 18, 1927.

DECISION

Case 1455

Re TURRET STEAMSHIP COMPANY LIMITED

The claimants are a Canadian company incorporated under the Nova Scotia Joint Stock Companies Act and the claim is for loss and damage sustained by said company through being deprived of the use of their steamer the *Turret Court* during the time occupied by said vessel under British Admiralty orders in freighting coal from Cardiff to Bordeaux and ore from Bilboa to Glasgow. The steamer was held by the Admiralty from arrival in Cardiff, April 29, 1918, until released August 6, 1918.

They were ordered to enter the French coal trade and were of course paid for the use of their ship.

The claim is apparently that if the ship had not been requisitioned it would have earned higher freights.

This claim was before the late Commissioner, who noted it for disallowance on the ground that the loss or damage sustained was due to the interference with the claimants' business by the order of the British Ministry of Shipping and not to any direct act of Germany. I agree.

This claim is disallowed as not coming within any of the categories of the First Annex to Section (I), Part VIII of the Treaty of Versailles.

February 18, 1927.

JAMES FRIEL,
Commissioner.

DECISION

Case 1456

Re CAPE STEAMSHIP COMPANY LIMITED

The claimants are a Canadian company incorporated under the Nova Scotia Joint Stock Companies Act and the claim is for loss and damage sustained by said company through being deprived of the use of their steamer the *Turret Cape* during the time occupied by said vessel under British Admiralty orders in freighting coal from Penarth to St. Nazaire and ore from Bilboa to Cardiff. The steamer was held by Admiralty from arrival at Cardiff, April 27, 1918, until released August 6, 1918.

They were ordered to enter the French Coal Trade and were of course paid for the use of their ship.

The claim is apparently that if the ship had not been requisitioned it would have earned higher freights.

This claim was before the late Commissioner who noted it for disallowance on the ground that the loss or damage sustained was due to the interference with the claimant's business by the order of the British Ministry of Shipping and not to any direct act of Germany. I agree.

This claim is disallowed as not coming within any of the categories of the First Annex to Section (I) Part VIII of the Treaty of Versailles.

February 18, 1927.

JAMES FRIEL,
Commissioner.

DECISION

Case 1457

Re CANADA STEAMSHIPS LINES, LIMITED

Claimants are a Canadian corporation. Their claim is on account of the loss of eleven steel or iron cargo vessels by enemy action during the war. They claim for the difference between the value of the ships and the amount of insurance or indemnity collected in each case, as indicated in this statement:—

Vessel	Dead-weight tonnage	Value	Hull insurance collected	Claim
		$ cts.	$ cts.	$ cts.
"Midland Queen"	2,800	560,000 00	162,546 60	397,453 40
"Empress of Fort William"	3,800	760,000 00	194,666 65	565,333 35
"Empress of Midland"	3,800	760,000 00	194,666 65	565,333 35
"Dundee"	2,900	580,000 00	305,955 57	274,044 43
"Strathcona"	2,700	540,000 00	294,433 33	245,566 67
"Neepawah"	2,160	432,000 00	321,200 00	110,800 00
"C. A. Jacques"	3,150	630,000 00	364,999 99	265,000 01
"D. A. Gordon"	3,300	660,000 00	255,350 50	404,649 50
"Armonia"	7,450	1,490,000 00	1,010,681 33	479,318 67
"Tagonia"	2,750	550,000 00	485,900 00	64,100 00
"Acadian"	3,345	669,000 00	388,960 00	280,040 00
	38,155	7,631,000 00	3,979,360 62	3,651,639 38

with interest at the rate of 5 per cent per annum from the date of destruction to date of settlement.

This claim was heard by the late Commissioner and Deputy Commissioner Relph at Montreal in June and September, 1923.

During the hearing the claim was amended as follows:—

—	Value when lost	Hull insurance collected	Difference
	$ cts.	$ cts.	$ cts.
"Midland Queen"	168,000 00	162,540 00	5,454 00
"Empress of Fort William"	494,000 00	194,666 65	299,333 35
"Empress of Midland"	494,000 00	194,666 65	299,333 35
"Dundee"	464,000 00	305,955 57	158,044 43
"Strathcona"	472,000 00	294,433 33	177,566 67
"Neepawah"	378,000 00	321,200 00	56,800 00
"C. A. Jacques"	551,000 00	364,999 99	186,000 01
"D. A. Gordon"	577,000 00	255,350 50	321,649 50
"Armonia"	1,378,000 00	1,010,681 33	367,318 67
"Tagonia"	508,000 00	485,900 00	22,100 00
"Acadian"	635,000 00	388,960 00	246,040 00
	6,119,000 00	3,979,360 02	2,139,639 98

War risk premiums paid for the years 1915-1920:—

On vessels lost	$ 733,920 20
On other vessels	1,126,758 43
Total claim	$ 4,000,318 70

With interest.

The claimants produced Francis A. Martin, of the firm of Frank S. Martin & Son, New York, ship engineer, surveyor, marine selling engineer and appraiser, as an expert witness, in support of their claim. Mr. Martin's unusual qualifications appear in the record of his evidence, and if his figures are not accepted as definitely establishing the value of the different ships lost, they do afford a guide in assisting to arrive at that value as nearly as possible, considering the conditions and circumstances in the different cases.

Mr. Martin said that in ordinary times, before the war, cargo ships were valued on replacement less depreciation. The value was set on the dead-weight tonnage because the dead weight tonnage is really the tonnage on which the ship earns her money; that is to say, her carrying capacity.

As soon as the war started the value of ships jumped so it was out of proportion in using that valuation, the net value, and depreciation did not count because a ship twenty years old was just as valuable as a brand new one. He produced a chart showing the cost of building cargo steamers from 1898 to the middle of 1920, showing a steady increase from the year 1914 to about the first of 1917, when there was a fluctuation, not very great. In the latter part of 1918 there was a steady rise till the first quarter of 1920, then the cost began to decrease very rapidly. The fall from 1920 onward was as great as the rise from the middle of 1914, and all war values were lost. The price depended too on how badly a man wanted a vessel. "If he had a cargo on the dock, he would pay nearly any amount." He cited the case of the *Atlantic* a comparatively new ship of 8,500 tons dead weight, which sold for $1,750,000.00 in June, 1917. Six months previous to that a sister ship called the *Pacific*, of the same size and age, sold for about $600,000.00. He thought a ship on this side of the water more valuable. She cost more to build and could immediately start with a cargo and "probably earn enough to pay for herself on the first voyage." All ships of the Allies were subject to requisition. A great many of them were free, and a man who owned a free vessel could carry any class of cargo he

wanted. A man with a requisitioned ship had to carry the cargo allotted to him by the Government, and the rates were restricted. Most of the American ships from 4,500 tons up were subject to requisition. The possibility of a vessel being requisitioned affected her market value. The owner could not sell her unless he had permission from the Government, and if she were subject to requisition, nobody wanted to buy her, the same as a ship with a long charter. He repeated that from his knowledge of the value of ships there was no difference in the age at the time. There were Japanese ships which sold for higher than new ships. The new ships could have no more value than the old because both were subject to the same risks. One could not insure an old ship of the same capacity for the same amount as a new ship, but some of the owners tried to keep their ships insured as high as they could. Freight rates were higher after the war than during the war. Up to April, 1920, the age did not make any difference. That year the shortage of tonnage came to an end. The United States Shipping Board had flooded the market with ships, and freight rates and values began to drop.

Mr. Martin cited the sales of other ships to establish values, as follows:—

SS. *St. Patrick*, built in 1905, sold July, 1915, at about $58.00 per dead weight ton; ss. *Hilonian*, built in 1880 sold in February, 1916, at $130.00 per dead weight ton; ss. *Navajo*, built in 1911 in California, sold in April, 1916, at about $127.00 per dead weight ton; ss. *Dunham* built in 1901, sold in March, 1916, at $170.00 per dead weight ton; ss. *Bearman*, built in 1912, sold in April, 1916, at about $160.00 per dead weight ton; ss. *Stanley Dollar*, built in 1908, sold in November, 1916, at $170.00 per dead weight ton; ss. *Columbia*, built in 1912, sold in June, 1917, at $215.00 per dead weight ton; ss. *Wetaskin*, built in 1907, sold in July, 1917, at $171 per dead weight ton; ss. *Unkimara*, a Japanese boat, built in 1890, sold in December, 1917, at $380 per dead weight ton; ss. *Storley*, built in June, 1889, sold in November, 1917, at $260 per dead weight ton; ss. *Navahoe*, built in 1880, sold in January, 1918, at about $170 per dead weight ton; ss. *Nevada*, sold in August, 1917, at about $268 per dead weight ton; ss. *Kirishimazen Maru*, built in 1895, sold in March, 1918, at $284.00 per dead weight ton; ss. *Cefernia*, built in 1899, sold in November, 1917, at $320 per dead weight ton, sold before the war for £25,000; ss. *Raven*, ship built on the Lakes and lengthened. Requisitioned by U.S. Government. Sunk in 1918. Compensation $200.00 per dead weight ton. Mr. Martin verified amount by the owners. His father was on the Advisory Board that adjusted compensations. SS. *Thomas Krag*, built in 1898, sold in July, 1918, at about $216 per dead weight ton; ss. *Miriska*, built in 1890, sold in December, 1918, at about $231 per dead weight ton.

Mr. Martin said the only one that he would classify as old, is the *Armonia*, built in 1891.

The age of the vessel in no way entered into the price at which it was sold during the war and up to 1920.

As to insurance "all that the average steamship owner would do, would be to say that this vessel was worth $500,000 and take war risk insurance out in that amount which he would get if the vessel were destroyed." The war risk insurance was for the trip.

Mr. Martin giving evidence about how prices might vary, having regard to how badly purchaser needed the ship, mentioned the *Pacific* about 8,500 dead weight tons sold in December, 1916, or January, 1917, for $600,000 or about $70.00 dead weight ton.

The Board of Trade furnished a statement giving values of Canadian vessels sunk in which the claimant's vessels figured as follows: It seems that the information was furnished by the owners.

Midland Queen	£45,000
Empress of Fort William	60,000
Empress of Midland	60,000
Dundee	55,000
Strathcona	80,000
Nicepawah	90,000
C. A. Jaques	95,000
D. A. Gordon	100,000
Armonia	$1,250,000
Tagona	£145,000
Acadian	100,000

David C. McKean, Manager of a subsidiary company to the claimants, defined dead weight tonnage for the Commission as the usual carrying capacity of a vessel in tons. Cargo vessels are bought and sold that way. He produced contracts for four vessels built by his company, the Tidewater Ship Builders' Limited, for the Canadian Government Merchant Marine in 1918-1919 at $200 per dead weight ton to be ready in the fall of 1919. The value of these vessels at the time of the hearing, June 6, 1923, was about one-third of that price. In 1902, $50.00 a dead weight ton would have been a good price. There was a shortage of vessels in 1916-1917. In 1916, 1917, 1918, and 1919, prices were abnormally high. The vessels covered by this claim were Lake type of vessels, the construction being rather peculiar and the engines and boilers placed in the aft ends, and built of a rather bluff shape so that they could carry a lot of cargo in the smallest space. They are built especially for canal work. They are not quite standard seagoing cargo vessels and it would be more difficult to replace them. Mr. McKean supposed 25 years to be the life of one of these steamers; some of them longer, some of them shorter.

R. Brock Thomson, Secretary of the claimant company at the time of the hearing, was not clear as to which, if any, of the vessels were requisitioned; being a canal size type, they had difficulty to make speed, therefore, the Admiralty did not requisition many of them. They had two, he thought, which were the company's faster Lake type vessels. One, the *Armonia*, could not go through the canals.

As to insurance, it was not as large as the value in all cases. The company were co-insurers in every case to a certain extent on account of the increased way the values were jumping. Some of the boats were under charter to the French Government for a certain period for which the French Government obligated themselves to pay a set figure. The value of the tonnage increased rapidly between the date of the charter and the date the ship was lost. These charters were not produced. The vessels were classed before putting them on the ocean at an average expense of over $12,000.00 per vessel.

Francis T. Cuttle, formerly secretary of the company, testified that the amount of the insurance was pretty well up to the supposed value of the ship at the time the insurance attached.

Insurance papers were not produced.

The costs of the different vessels to the company were not given although asked for several times, nor the values at which the different boats were taken at the time of the amalgamation of the different companies forming the claimant corporation.

Mr. Warwick Chipman, K.C., who conducted the case for the claimant very ably and very fairly, especially considering there was no opposing counsel,

pointed out the amount it would have cost the company to replace vessels as sea-going concerns on the day after their destruction. Germany had bound herself to replace ships, ton for ton and class for class. That was not possible and claimants had to fall back on a monetary compensation, which he took to mean the replacement value at the exact moment the ship was destroyed. It was true the company might buy a replacement but the value might go down two or three years later, and the company was entitled to a capital with a certain earning power on that basis.

Dr. Pugsley asked Mr. Chipman to consider the matter entirely outside of the question of replacement which Germany was liable to be called upon to make, from which, apparently, she had been excused and to depend entirely on the damage which the company sustained. Might this not be the measure of damag —as to what a vessel could have reasonably earned for the owners during the years when the vessel might naturally be expected to be in commission and if that were so we would have to take into consideration the decline which took place in freights. It was very doubtful to him whether he would be justified in allowing the full value of a new vessel because assuming the life of claimants' vessels to be 25 years, a new vessel might be worth double what these were worth. A good many elements would enter into the question of damages. One would be the cost of the vessels, others, the state in which they were, the repair, probable life of each vessel and its earning power, and if new vessels were bought, what the cost would be and how much more valuable the new vessels would be than the existing ones.

Mr. Chipman said if he were arguing a case in the Province of Quebec or a similar case under the Common Law or the Civil Law, he would not be able to submit any figures to the Court as to the earning capacity; he would not be allo to do so, because, he would be met with the answer "You might have done this, that, or the other thing." The Court would have simply put before it, the replacement value on the date of destruction. At the close of the hearing, Mr. Chipman's argument was as follows: "As far as I can make out, I think the only measure of damages I could put before you and the measure I am entitled to argue for, is the value of those boats as capital on the date of destruction. It makes very little difference whether you take it as the amount we have to spend in the open market, as between a willing purchaser and a willing seller, to take the place of the boat or whether you ask what is the value at which these boats could have been sold on that date between a willing purchaser and a willing seller. The legal principle I think is perfectly clear. We are guided in deciding these claims I suppose by the language of the Treaty, which states that we shall take into account the principles of equity. "The Commission shall not be bound by any particular code or rules of law or by any particular rule of evidence or of procedure, but shall be guided by justice, equity and good faith. Its decisions must follow the same principles and rules in all cases where they are applicable. It will establish rules relating to methods of proof of claim. It may act on any trustworthy mode of computation."

DECISION

The claims for war risk premiums paid either on the vessels lost or other vessels will not be allowed. They are not a matter of direct damage by Germany. The claimant company put on the insurance of its own volition and in the exercise of its own discretion on account of the existence of a state of war, but the expenses are in no sense losses, damages or injuries caused by the enemy's act within the meaning of the Treaty. The expenses were not incurred to repair loss by the enemy's act, but to provide against what the claimant feared the enemy might do resulting in a loss to it. The expenses were

losses to the claimant on account of the war but are not losses for which Germany could be obliged to pay; moreover, such losses were no doubt more than compensated for by increased freight rates. There is no more reason for compensation to the claimants for the war risk insurance premiums paid than there is that the advance in ocean freight rates during the war should be recovered by the persons who had to pay them.

If the terms of the Treaty could be interpreted to cover such claims, then they could be taken to include all increased living costs, increased railway freights, increased income and profit taxes; in a word, all costs or consequences of the war direct or remote, to the extent that such costs were paid or losses suffered by Canadian subjects.

I would disallow the claim for war risk insurance paid.

With reference to the question of interest, I accept Mr. Chipman's argument. I think that where material damage is suffered and the amount is readily ascertained, interest should run from the actual date when the damage was incurred.

As to the measure of damages, I agree that compensation should be given for the pecuniary loss, so as to put the claimants in the same position as far as money can do it, as they would have been in, if the vessels had not been destroyed.

I would like to be guided in the matter along the lines of the instructions to the Inter-Allied Commission, as cited by Mr. Chipman from the Treaty.

Lord Sumner, Chairman of the London Reparation Committee, laid it down that:—

"As regards the amount of damage, it was agreed that claims should be assessed at such a sum as might be awarded by a jury in an action for tort."

I would be inclined to award the claimants what could be fairly claimed in each case before an intelligent jury, having in mind how the Court would likely direct them as to the law.

Mr. Martin's testimony as to prices in isolated cases in abnormal conditions in what could hardly be called an open-market and under circumstances not disclosed, would have to be greatly discounted. His view that the age of the vessel did not matter, could not be accepted. His way of capitalizing the enormous earnings of the vessels at one unusual period of their life, could hardly be adopted, and notice would have to be taken of the fact that while he classed these vessels as of sound condition at the time of their destruction, he had, so far as the record shows, never seen them. Weight would have to be given to the evidence of Mr. Cuttle, Secretary, of the claimant company during the time of the losses to the effect that the amount of insurance was pretty well up to the supposed value of the ship at the time the insurance attached. Mr. Thompson's evidence in that respect would be disregarded because so far as the record discloses he was not at the time in a position to know. Weight would also have to be given to the Board of Trade values hereinbefore and in the evidence referred to. Special consideration should be given to the compensation awarded by the British Admiralty in the case of the two ships, the *Jaques* and the *Tagona* requisitioned, where the British Government assumed the war risk and settled with the claimants. The requisition charters were not produced. Attention would be called to the compensation paid by the French Government for vessels lost while under charter to that Government. There is no evidence that the company tried to replace the ships lost or to rebuild them with the large amount of insurance received in 1916-1917, or from the earnings of their other vessels not destroyed, and attention might well be called to the original cost of the vessels, to their earning capacity before the war, and the earning capacity of remaining vessels after the war. The age and condition of the vessels destroyed would have to be considered and the fact that they were

mostly lake boats and not ocean going vessels and that most of them were not suitable for requisition by the British Admiralty. The jury would be called upon to decide what amount of money at the time of the destruction of each vessel would be of as much value to the owners as the vessel destroyed.

The *Midland Queen*. This ship was captured by enemy submarine and sunk by gun fire August 4, 1915, when on a voyage from Sydney, C.B., to the United Kingdom, with a cargo of 2,200 tons of steel rods, wire and nails, shipped by the Dominion Steel Company. This vessel was built in 1901 and was of 2,800 tons dead weight tonnage or 1,993 tons gross tonnage. The owners were insured by "English Underwriters" a syndicate, I believe, of insurance companies and owners, protected by the British Government, but it does not matter, in the amount of £33,400 in respect to the hull and £5,000 in respect to the freight on the cargo. The owners received in respect to the hull, indemnity in the amount of $162,546.60 equalling $58.20 per dead weight ton or $81.55 per gross ton. Martin's valuation is $168,000.00 and is equal to $60.00 per dead weight ton or $84.00 per gross ton.

I think that the insurance amply covered the value of this ship when destroyed. It was a fairly old vessel, being 14 years old when destroyed.

This item of the claim is disallowed.

The *Empress of Fort William*. This ship was destroyed by mine off Dover Pier, February 27, 1916, while on a voyage from South Shields to Dunkirk, France, with a cargo of 3,300 tons of coal. This ship was built in 1908 and was of 3,800 tons dead weight tonnage or 2,181 tons gross tonnage. The owners were insured with the "English Underwriters" for £40,000 on the hull and £5,000 on the freight moneys and they received indemnity on the hull in the amount of $194,666.65, equal to $51.60 per dead weight ton and $89.25 per gross ton. Martin's valuation is $494,000.00 and is equal to $130.00 per dead weight ton or $226.00 per ton gross tonnage.

I am inclined to think this ship was not insured to its apparent value. There may have been reasons which do not appear on the record. I am inclined to value this vessel at $80.00 per dead weight ton, making $304,000.00. On deducting the indemnity collected, there is a balance of $109,333.35, which I would allow as compensation with interest at the rate of 5 per cent per annum from the date of the destruction of the vessel, to date of settlement.

The *Empress of Midland*. This ship was sunk by enemy submarine March 27, 1916, while on a voyage from South Shields, Great Britain, to Rouen, France, with a cargo of 3,300 tons of coal. The ship was built in 1907 and was of 3,800 tons dead weight tonnage and 2,224 tons gross tonnage. The owners were insured in the amount of £40,000 on the hull and £5,000 on the freight. They received indemnity on the hull, $194,666.65 which is equal to $51.60 per dead weight tonnage and $87.53 per gross tonnage. Martin's valuation is $494,000.00 and is equal to $130.00 per dead weight ton and $222.00 per gross ton. This ship was a sister ship of the *Empress of Fort William* and I think that the same valuation of $80.00 per dead weight ton would be fair compensation in this case also, making $304,000.00. On deducting the indemnity collected, there is a balance of $109,333.35, which I would allow as compensation, with interest at the rate of 5 per cent per annum from the date of the destruction of the vessel to date of settlement.

With reference to the values in the case of these two ships, this Commission has had to deal with a claim on account of the loss of the steamer *Pontiac*, 5,700 tons dead weight, sunk April 28, 1917, while under requisition by the British Admiralty, who assumed the war risk under a requisition charter. The Admiralty put their own valuators on the case who valued it at $462,090.00, or about $80.00 per ton dead weight and the owners, shrewd business men and experienced managers of ships, accepted that amount rather than go to arbitration. The *Pontiac* though older (built in 1902) was a better ship, I believe than either the *Empress of Fort William* or the *Empress of Midland*.

The *Dundee*. This ship was sunk by enemy submarine January 31, 1917, while on her way from London, in water ballast, bound for Swansea. She was built in 1906, and was of 2,900 tons dead weight tonnage and 2,278 tons gross tonnage. The owners were insured by "English Underwriters" in the amount of £65,000 on the hull and £17,000 on the freight. The hull indemnity received amounted to $305,955.57 which is equal to $105.50 dead weight tonnage and $134.30 per ton, gross tonnage. Martin's valuation is $464,000.00 equal to $160.00 per dead weight ton and $205.00 per gross tonnage.

I think that the loss of this ship was fully covered by the insurance indemnity received.

This item of the claim is disallowed.

The *Strathcona*. This ship was sunk by enemy submarine April 13, 1917, while on a voyage from Tyne Dock, England, to Marseilles, France, with a cargo of 3,000 tons of coal for the French Government. She was built in 1900 and was of 2,700 tons dead weight tonnage and 1,881 tons gross tonnage. The owners were insured by the French Government in the amount of £60,500 on the hull and by "English Underwriters" in the amount of £5,000 on the freight. The amount of indemnity collected from the French Government in respect to the hull was $294,433.33 which is equal to $109.00 per dead weight ton or $155.00 per ton gross tonnage. Martin's valuation is $472,000.00, equal to $175.00 per ton dead weight or $251.00 per ton gross tonnage.

The damage seems to have been a question for settlement between the owners and the French Government, but whether it was or not, I find that the amount of insurance indemnity collected by the owners fully covered the loss.

This item of the claim is disallowed.

The *Neepawah*. This ship was sunk by enemy submarine April 22, 1917, in the approaches to the English Channel, while on a voyage from Huelva, with a cargo of iron pyrites bound for Rouen, France. She was at the time under charter with the French Government. This ship was built in 1903, and was of 2,160 tons dead weight tonnage and 1,799 tons gross tonnage. The owners were insured by the French Government in the amount of £66,000 on the hull and by "English Underwriters" in the amount of £5,000 on the freight. The amount of indemnity collected from the French Government, in respect to the hull was $321,200.00 which is equal to $148.70 per dead weight ton or $178.54 per ton gross tonnage. Martin's valuation is $378,000.00 equal to $175.00 per dead weight ton or $210.00 per ton gross tonnage.

I find that the amount of indemnity collected by the owners on this 14 year old steamer fully covered the loss.

This item of the claim is disallowed.

The *C. A. Jaques.* This ship was sunk by enemy submarine May 1, 1917, while on a voyage from Rouen, France, in ballast, to the River Tyne, England. She was under requisition by the British Admiralty at the time. She was built in 1909 and was of 3,150 tons dead weight tonnage and 2,105 tons gross tonnage. The owners were insured by the British Admiralty in the amount of £75,000 on the hull and by British Insurance Companies in the amount of £17,000 on the freight. The hull indemnity received amounted to $364,999.99, which is equal to $116.00 per ton dead weight or $173.00 per ton gross tonnage. Martin's valuation is $551,000.00, equal to $175.00 per dead weight ton or $261.00 per gross ton.

I have no doubt that the indemnity paid by the British Government compensated the owners for the loss of this ship.

The question of damages was a matter between them and the British Admiralty.

This item is disallowed.

The *D. A. Gordon.* This ship was sunk by enemy submarine December 13, 1917, while on a voyage from Marseilles in water ballast, bound for Melilla. The ship was built in 1905 and was of 3,300 tons dead weight tonnage and 2,301 tons gross tonnage. The owners were insured by "English Underwriters" through Lloyds, in the sum of £53,000 on the hull, £22,000 on the freight with the North of England Protecting and Indemnity Association and The Standard Steamship Owners Mutual War Risk Association. The amount of indemnity collected for the hull was $255,350.00 equal to $77.40 per dead weight ton or $111.00 per ton gross tonnage.

Martin's valuation is $577,000.00 equal to $175.00 per dead weight ton or $250.00 per ton gross tonnage.

There is no explanation of a smaller amount of insurance on the hull nor of the greater amount on the freight, greater than that on the freight of any of the other vessels destroyed.

I could infer that for some reason or other, the hull wouldn't stand a larger amount of insurance. I am quite satisfied as a general proposition that after 1916, claimants' ships carried insurance for all they were worth. The record generally, lacks a lot of information which would have been useful, a fact that is very noticeable in this case.

I would, however, recommend that the *Gordon* be considered at the time of her destruction as of the value of $110.00 per dead weight ton which gives her a value of $363,000.00 out of which is to be deducted the amount of compensation received, $255,350.50, leaving a balance of $107,649.50 which I find is fair compensation to the claimant company, with interest at the rate of 5 per cent per annum from the date of the destruction of the ship to the date of settlement.

The *Armonia.* This ship was sunk by enemy submarine March 15, 1918, while on her way from Genoa to New York. Seven of the crew were lost. The ship was built in 1891 and was of 7,450 tons dead weight tonnage and 5,226 tons gross tonnage. The owners were insured by American and English Underwriters to the amount of $1,003,181.33 on the hull and $7,500.00 on Disbursements. The amount of indemnity collected for the hull was $1,010.681.33, equals $135.66 per dead weight ton or $193.37 per ton gross tonnage. Mr. Martin's valuation is $1,378,000.00 equal to $185.00 per ton dead weight tonnage or $264.00 per ton gross tonnage.

The *Armonia* left Genoa March 14, 1918 in ballast in a convoy of 19 ships arranged in five parallel lines of three and four ships each. The United States Man-of-War *Nashville,* was ahead of two of the columns. On the starboard quarter of the convoy was the British armed trawler *Covri* and on the port quarter was the mystery ship, which was, I believe, a noted terror to submarines. The *Armonia* was the commodore's or flag ship and she was the head steamer in the third column. The speed of the convoy was to be 7½ knots but they were only making 5 knots, at the time the ship was torpedoed. She was struck amidships abreast of the engine room. The seven men killed were on duty in the engine room and were apparently killed instantly by the explosion. The ship sank twenty minutes after the time she was struck.

The insurance in my opinion amply and more than covered the loss to the owners and I would disallow this item of the claim.

The *Tagona.* This ship was sunk by enemy submarine May 16, 1918, while on a voyage from Bilboa, with a cargo of iron ore bound to Glasgow She was built in 1908, 2,750 dead weight tonnage and 2,004 gross. The owners were insured in the sum of £100,000.00 on the hull and £20,000 on the freight. The indemnities were paid by the French Government. There was received for indemnity on the hull the sum of $485,900.00, equal to $176.32 per ton dead weight or $247.45 per ton gross tonnage.

Martin's valuation is $508,000.00, equal to $185.00 per ton dead weight, or $253.00 per ton gross tonnage. I have no doubt that the insurance amply compensated the owners for the loss of this ship. This item of the claim is disallowed.

The *Acadian* . This ship was sunk by enemy submarine September 16, 1918, while on a voyage from Bilboa to Ayr, Scotland, with a cargo of 3,000 tons of coal. Twenty-five lives were lost. The ship was built in 1908 and was of 3,345 tons deadweight tonnage and 2,305 tons gross tonnage. The owners were insured by "Insurance Underwriters" to the extent of £80,000 on the hull and £15,000 on the freight. The hull indemnity was paid by the French Government and amounted to $388,960.00, equal to $116.28 per ton deadweight or $168.75 per ton gross tonnage. Martin's valuation is $635,000.00, equal to $190.00 per deadweight ton or $275.00 per ton gross tonnage. This ship was apparently under charter by the French Government.

I have no doubt that the indemnity paid on the hull fully compensated the owners for the loss.

This item of the claim is disallowed.

This claim of the Canada Steamship Lines Limited comes within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9). I find that in respect to the ships *Midland Queen, Dundee, Strathcona, Neepawah, C. A. Jacques, Armonia, Tagona,* and *Acadian,* the loss in each case was fully covered by the insurance indemnity collected and I recommend that no allowance for further compensation be made on account of the loss of the said ships.

I would allow for compensation over and above the insurance indemnity received in the cases of the,—

Empress of Fort William, the sum of..	$109,333 35
Empress of Midland, the sum of..	109,333 35
D. A. Gordon, the sum of..	107,649 50
Making a total allowance of..	$326,316 20

with interest at the rate of 5 per cent per annum from the date of destruction of each ship to the date of settlement.

I find $326,316.20 fair compensation to the claimant company, with interest as indicated.

JAMES FRIEL,
Commissioner

July 9, 1926.

After I had written the above decision the claimant's counsel, Mr. Chipman, asked for a chance to argue the case before me. He also wished to adduce further evidence. In compliance with his request there was a hearing in the matter at Montreal, December 3, 1926, and the whole claim was fully gone into again. We discussed the ship values in relation to prices as shown in the list of sales of British ships during the war in Lloyd's Calendar and Fairplay, also records produced of the sale of American ships. We had some of the American decisions on values by their Mixed Claims Commission.

Mr. Francis Martin was one of the experts for claimants before the American Mixed Claims Commission and claimant's counsel there filed his evidence given in this case, and it is referred to in the brief of the American claimants.

Reference is made in the Chemung decision, page 694, of the Administrative Decisions of the Mixed Claims Commission to the sale of one ship made in 1916 at $116.00 per gross ton, another in February, 1916, at $124.00 per gross ton, one in March, 1916, at $123.00 per gross ton, and one in April, 1916, at $128.00 per gross ton. The Chemung, 3,061 gross tons, was sold by Charles W. Morse, April 22, 1916, for $115.00 per gross ton, the equivalent of about $87.00 per deadweight ton. The award for the loss of the American steamer *Carib*, 2,780 gross tons, sunk by mine February 22, 1915, was $242,000.00, the equivalent of $116.00 per gross ton or about $73.00 per deadweight ton, and there are other American awards to which attention may be called indicating that Mr. Martin's evidence was taken at the usual value of expert testimony of the sort.

Claimant's boats destroyed were of no high-class, but were for use on the lakes mostly. If they could be got across the Atlantic during the war they were serviceable enough in moving cargo from Spain to the United Kingdom and France.

I am quite convinced that in the three cases in which I have recommended an allowance the amount is not only fair but generous, and that in the other cases at the time of the respective loss the boats had no reasonable market value in excess of the insurance collected.

JAMES FRIEL,
Commissioner.

February 18, 1927.

DECISION

Case 1458

Re SS. "ERETRIA" COMPANY, LIMITED

Claimants are a Canadian corporation with Head Office at Rothesay, New Brunswick, the shareholders of which are practically all Canadian subjects or representatives of the estates of deceased Canadians.

Their claims is for the difference between the value of the *Eretria*, owned by them, sunk by a mine in the Bay of Biscay, May 12-13, 1916, plus certain expenses, less the amount of war risk insurance recovered. The ship sailed from Tampa, Florida, April 19, 1916, with a cargo of 4,977 tons of phosphate rock for LaPallice, France.

The claim is as follows:—

Value of ship at $170.00 per ton deadweight	$980,900 00
Cost of bringing crew home	700 18
	$981,600 18
Less amount of war risk insurance on hull collected	292,732 12
	$688,868 06

Plus war risk premiums.

The *Eretria* was built in 1901, tonnage 5,770, dead weight, 3,463 gross and 2,255 net registered. The original cost of construction, outfitting and expenses of incorporating the company were $229,054.08. She was making big earnings.

I would allow on a valuation of $90.00 per deadweight ton at the time of loss. The expenses incurred on account of the crew will be allowed, but not war risk premiums. Interest I think should run from the date of the loss.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9), and I find that $227,268.06 is fair compensation to the claimants with interest at 5 per cent per annum from May 13, 1916, to date of settlement.

JAMES FRIEL,
Commissioner.

Revised Judgment, February 25, 1927.

DECISION

Case 1459

Re National Fish Company Limited

The claimants are a Canadian corporation, incorporated under the laws of the Province of Nova Scotia, and the shareholders are all Canadians. They claim compensation for the loss of the steam trawler *Triumph* 239 tons, captured by enemy submarine 60 miles South West of Cape Canso, N.S., August 20, 1918. This vessel was converted into a raider by the Germans.

The captain and crew, 24 men in all, were first taken on the submarine where they were kept for three hours while the Germans threw overboard the cargo and mounted two machine guns, and were then sent adrift in two boats, and told to row ashore. They made Canso 95 miles, the next afternoon. They had lost all their effects and the captain's chronometer and sextant also his money and watch and the engineer's tools.

The *Triumph* had been fishing and trawling on the Bank of the southern part of middle ground and had 50,000 pounds of cod and haddock on board.

The claim as put in is as follows:—

1. Value of ship	$250,000 00
2. Premium paid on war risk, policies on hull	7,091 22
3. Loss with respect to cargo	1,600 00
4. Loss in ascertainable profits on cargo	510 00
5. Wages and share earnings lost by fishermen on board	6,079 00
6. Expenses incurred by owners for crews in returning home	1,350 00
7. Value of personal effects lost by crew	4,700 00
8. Loss of gear and equipment	10,000 00
9. Coal and supplies on board	1,500 00
	$282,803 22

"This vessel was landing for us about 150,000 pounds of fish per week, which fish were being sold at a profit and we were largely dependent upon this vessel for our supply of fish, and we have consequently suffered great loss in our business."

The ship was insured for $220,000 which was recovered. The insurance was on the hull only, not any insurance on the equipment or cargo.

The case was heard by the late Commissioner at Halifax September 9, 1924.

The vessel was a steel ship built in 1907, gross tonnage 239.27. Registered tonnage 124.6, Length 112.25, Width 22.05, Depth 11.5, Steam driven, 69 Horse-power. She had been in use in Grimsby, England, about 18 months and then was sent out to Vancouver and was used there about 6 months. She was laid up there for two years and in 1916 was bought by the claimants without equipment for $55,000.00. The equipment including wireless cost $7,000.00. Trawlers of that size ready for sea, before the war, would cost £9,000 to £10,000, in England. In 1919 they cost £25,000. In normal times the cost of building similar boats would run from £12,000 to £15,000 to £20,000. At the time of the hearing it would be £15,000.

It seems to me, after careful and painstaking consideration of the evidence and record in this case, that the insurance recovered amply compensates the claimants. Losses of prospective profits, even if there were any likely, is not a proper element of damage. Loss sustained by filling contracts at a greater expense for the goods could be properly claimed and in this case there is very indefinite proof of any substantial loss in that respect. In respect of some contracts not definitely mentioned, fish had to be purchased at 5c. per pound instead of 3c. per pound which the Company were paying their own fishermen. There is no statement as to what that amounted to. The war was nearly at an end when the claimants lost their vessel and the very next spring the fish business began to fail and went completely bad in the following years. The claimants went into liquidation in 1921 but I can hardly see that it was on account of the loss of the *Triumph*.

The insurance will be considered as amply covering the first two items of the claim.

There was no insurance on the gear and equipment and I would allow compensation therefor at the amount claimed and the same with reference to coal and supplies. The expenses incurred by the owners for the crew's return home is also a proper item to allow, and the share in the loss with respect to cargo, but not any expected profits on the same more than the increased value to the Company of 40 per cent over the price paid the fishermen.

The Canadian subjects among the crew and the Captain should be allowed the one-third share they were entitled to in the catch actually on board, and the usual solatium or torpedo money and for personal effects.

I would allow the owners, value of cargo

less fishermens share	$ 1,706 00
Expenses *re* crew	1,350 00
Equipment and gear	10,000 00
Coal and supplies	1,500 00
	$14,556 00

with interest at the rate of 5 per cent per annum from the date of the loss August 20, 1918, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9) and I find $14,556.00 is fair compensation to the owners with interest as indicated above.

JAMES FRIEL,
Commissioner.

February 12, 1926.

There will be a separate finding in respect to Canadians employed on the boat when this information is received.

DECISION

Case 1460

Re OVERSEAS SHIPPING COMPANY, LIMITED

The claimants are a Nova Scotia corporation, nationality or residence of shareholders not stated. The claim is on account of loss of claimant's ship *Briardene*, 2,701 tons, captured by enemy submarine and sunk 12½ miles south east by south from Bishop Rock on the English coast, December 1, 1916, while on a voyage from New York, which she left November 16, 1916, to London with a cargo of general merchandise. The owners allege that the ship at the time of destruction was of the value of $1,250,000.00. They recovered $250,000.00 insurance, and claim the difference, $1,000,000.00.

The *Briardene* is described as a

"Charcoal-iron-twin screw. Steam vessel. Using 28 tons on 11 knots. Built as mail steamer and reconditioned as cargo steamer. Length 335.5; beam 39/3; depth 26.9; draft 23.11."

She was built by Scott & Company, Greenock, in 1882, and was registered in St. Johns, Newfoundland. Dead Weight tonnage is given as 3,800 tons, coal bunkers 350 tons, total 4,150 tons, gross tonnage as above, net weight tonnage 1,723 tons, net speed 9.12 knots.

The claim was heard before the late Commissioner at Halifax, September, 1924, and some evidence given at the hearing of the Dominion Steel Company's case in Montreal was offered and received in this case.

Captain Peter Johnson, superintendent of pilots, port of Halifax was called by counsel for claimant and gave evidence in support of the claim. He knew the *Briardene* very well. At one time he had a small interest in her. In 1898 he had gone over and bought her for £12,000—for a company in Halifax, and he had sailed her for a while. Subsequently, in 1906 or 1907, Mr. Dickie bought her for $50,000.00. She was not then in very good condition. In 1916 he sold her to the Overseas Shipping Company, Ltd., for $135,000.00. Her condition then was very good. She had had a lot of repairs put on her, new boilers installed, etc. Mr. Dickie had spent $25,000.00 on her. She was formerly a 14 knot boat, and an old Clan MacKenzie liner.

"They ran her about 10 knots to save coal. She would be considered a fast boat for freight-carrying purposes if they drove her. She was built of iron and they last longer than the ordinary steel ships."

Captain Johnson had advised Mr. Dickie to sell the vessel. She had made a lot of money during two years of the war, but he did not know when the war would end, and after it was over she would not be worth one-half what he could get at that time. Fair value for her when she was lost would be $135,000.00 and whatever the Overseas Shipping Company, Limited, had spent on her. Counsel referred to evidence of Mr. Francis A. Martin in the Canada Steamships Line case, and to Lloyds Calendar, 1923.

Dr. Pugsley offered counsel the opportunity of presenting evidence as to the expenses of reconditioning the ship after she had been purchased by the claimants. No further evidence of such outlay was given. Considering to some extent the age of the ship but having in mind her earning capacity under the then existent conditions and looking at the prices for which vessels of about the same tonnage sold in 1916 and 1917 as given by Lloyds register notably in the cases of the *Harmonic*, the *Kyleakin*, *Portneath*, the *Abaris*, and the *Dungeness*, I believe that the sum of $350,000.00 would be a fair and generous value to put on the *Briardene* at the time she was lost.

The claim comes within the First Annex to Section (1) Part VIII of the Treaty of Versailles, category (9), and I find $100,000.00 is fair compensation to the claimant company with interest at the rate of 5 per cent per annum from December 1, 1916, to the date of settlement.

February 6th, 1926.

JAMES FRIEL,
Commissioner.

DECISION

Case 1461

Re MARINE CONSTRUCTION COMPANY, CANADA, LIMITED

Claimants are a Canadian corporation. They claim on account of the loss of the four-masted wooden schooner *Dornfontein*, registered tonnage 695.36, dead weight tonnage 1,500, which was attacked and captured by German submarine off Briar Island, in the Bay of Fundy, on August 2, 1918, and after being stripped was fired and became a total loss.

The vessel was insured for $100,000 war risk insurance on the hull and $20,000 disbursements, which should include sails. The whole insurance was collected. The *Dornfontein* was on her maiden voyage to Durban, South Africa, with a cargo of lumber. She was a specially well built vessel and her cost is given by the manager of the company at $131,945.56, to which claimant wants to add half of the cost of the plant amounting to $26,719.61. Claimant's ship-building plant was abandoned after the building of one more ship, the *Randfontein*, net tonnage 798.78, dead weight tonnage 1,722. This last mentioned ship was sold by the company for about $350,000. She cost $216,637.60.

There was $25,000 insurance on the freight of the *Dornfontein*. The ship had a further charter to carry coal from Durban to Buenos Ayres. Claimants estimated a profit of $50,000 net on the two freights, on the round trip to Durban and then to Buenos Ayres, taking about twelve weeks. We cannot allow for loss of profit, but the earning capacity of the ship must be taken into consideration in arriving at her value when sunk.

The manager of the company swore that he had two offers, one of $150,000 and the other $175,000 for the *Dornfontein*, but the latter offer came to him in July when the vessel was chartered.

I think that $150,000 is a fair and probably a generous value to put on the ship as at date of loss and I will allow claimants on that basis, that is to say $50,000, making a difference between the value found and the insurance collected, with interest at the rate of 5 per cent per annum from the date of loss, August 2, 1918, to date of settlement.

This claim falls within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9), and I find $50,000 fair compensation to the claimants with interest as above indicated.

JAMES FRIEL,
Commissioner.

January 10, 1927.

Case 1462

Re DEPARTMENT OF NATIONAL DEFENCE

No action taken. Claim for loss of Hospital Ship *Llandovery Castle*, June 27, 1918.

Amount claimed, $3,606,094.59.

Commissioner of the opinion that he has no jurisdiction in this claim.

DECISION

Case 1463

Re DOMINION COAL COMPANY LIMITED

Claimant is a Canadian corporation, incorporated by Special Act of the Nova Scotia Legislature, being Chapter 145, of the Acts of the Province of

Nova Scotia for the year 1893, it filed the following claims:—

Claim number 1.—For loss and damage sustained by said company through being deprived of the use of ships chartered by it, requisitioned by the Imperial Government during periods of the war:

Chartered Steamers Requisitioned.		*Insurance Premiums.*	
Daghild	$ 252,419 36	$13,872 00	
Rosecastle	218,616 62	11,654 40	
Lord Strathcona	143,566 96	8,707 20	
Kendall Castle	40,483 02	4,036 80	
Kamouraska	197,046 80	13,939 20	
Wabana	183,411 12	12,667 20	
Twickenham	55,173 60	2,313 60	
Maskinonge	39,468 64	1,123 20	
Batiscan	3,481 18	43 20	
	$1,133,667 30	$68,356 80	
			$1,065,310 50

Claim number 2.—For the cost to claimant company by chartering vessels substituted in the place of vessels requisitioned during the years 1915, 1916 and 1918 .. 1,791,213 27

Claim number 3.—For loss to the company by reason of inability to deliver coal to the New England Coal & Coke Company at Boston, under contracts, owing to certain chartered ships being sunk by enemy submarines and others being requisitioned by the British Government under the Defence of the Realm Act. Particulars of loss, by reason of not being able to obtain the services of suitable vessels owing to activity of German submarines:

1916 to March 31	$ 55,724 56	
1917 to March 31	276,689 46	
1918 to March 31	821,188 79	
1919 to March 31	25,687 35	
	$1,179,290 16	
Damages paid the New England Coal and Coke Company, for non-fulfilment of contract	$ 200,000 00	
Interest	19,075 00	
		$1,398,365 16

Claim number 4.—For loss and damage sustained by the company for being deprived of the use of the ss. *Kendall Castle*, sunk by submarine September 15, 1918, from that date until the expiration of the company's charter party, based upon rates which the company might have obtained by re-chartering to others .. 791,304 00

Claim number 5.—For loss and damage sustained by the company through being deprived of the use of the ss. *Stigstad* (Norwegian Registry), sunk by enemy submarine November 10, 1916, while under charter to the company .. 899,712 00

$6,045,904 93

These claims were heard by the late Commissioner who left an unsigned decision in respect of the three claims first mentioned which read as follows:—

Under claim number 1, there are nine vessels mentioned which were held by the company under charter and the claim for loss represents the profit which would have been made by the company had they been permitted to exercise the privilege of re-chartering the vessels to the Imperial authorities under Blue Book rates.

Claim number 2 is for the cost to the Dominion Coal Company Limited by chartering vessels which were substituted in the place of vessels which were requisitioned, the amount of the claim being $1,791,213.27.

Claim number 3 is for loss to the Dominion Coal Co., Limited, by virtue of their having been unable to complete contracts for delivery of coal to the New England Coal and Coke Company, owing to the fact that the vessels available for delivery were requisitioned by the British Admiralty.

The claim is as follows:—

1. Increased cost of freight and insurance upon transportation of coal, being excess cost over $.473 per ton..	$ 951,155 67
2. Paid New England Coal & Coke Company in settlement of claim for damages..	200,000 00
3. Paid United States exchange on this..	19,075 00
4. Condemnation for repayment of insurance upon ss. *Maskinonge* and ss. *Batiscan* and law costs..	126,246 18
5. War-risk insurance upon ss. *Cape Breton* and other vessels..	6,632 39
The total claim is..	$1,303,109 24

The arguments advanced by counsel under claim number 4 are applicable to all items of these combined claims which are based upon the requisition by the British Government. It seems that the nine vessels mentioned in claim number 4 were English owned, and were the first class of ships which were requisitioned by the British Government. They were a special build of steamer, adaptable for the purposes of the Dominion Coal Company and undoubtedly the fact that the company was deprived of their use by the act of the British Government was a serious handicap to them in the carrying out of their business.

Admitting this to be true, I pointed out to the counsel that it would be necessary to show under what Section of Annex (I) Part VIII of the Treaty of Peace, the claim would come, so that I would have jurisdiction to deal with it. In reply the counsel stated that the claim was based upon the terms of Category (9) to the Annex. I pointed out that this could scarcely be deemed as direct damage as defined by category (9) when in order to bring about the loss, it was necessary for the Imperial Government to exercise its discretion and its power of intervention and take away the claimant's property.

If wrong was done, was it not done rather by the British Government than by the direct act of Germany? The counsel argued that it was all occasioned by the war and in the brief submitted to me, authorities are quoted and arguments presented in order to establish that the intervening act of a third party would not nullify their claim in this respect.

Arguments were also presented upon the question of direct damage.

I have given very careful consideration to the arguments presented by counsel, for the claimants, and have reviewed the authorities quoted and after a review of the entire question, I find that I cannot agree with the contention of the claimants, that the claims as outlined by the Dominion Coal Company, being numbers 4, 5 and 6 in the general outline of the claims set out at the commencement of this decision, are such as would come within category (9) of Annex (9) to Part VIII of the Treaty of Peace, as being direct damage caused by an operation of war by Germany or her allies.

I think that if I were to interpret category (9) as being capable of admitting claims of this nature, the scope of this inquiry would be widened to such an extent that the purpose of the Annex would be defeated and all manner of claims for damage however remote or indirect, would have to be entertained by me. It is true that Germany has admitted responsibility for having brought about a state of warfare, and by so doing has caused hardship and loss in various degrees, which is shared in common by all nationals of the British Empire, but I think in order to hold Germany responsible for any particular item of loss, it is encumbent upon the claimant to show some direct and positive act on the part of Germany which was directly responsible for such loss.

In the claims under the headings of 5 and 6, the direct and positive act which occasioned the loss complained of was the act of the British Government put into effect for the general welfare and progress of the allied cause in the great war, and I am, therefore, constrained to disallow the amounts as claimed by the Dominion Coal Company, Limited, as set out under items 4, 5 and 6, they in my opinion not being claims which would come within my jurisdiction in the interpretation of the said Annex (I) to Part VIII of the Treaty of Versailles.

So runs the draft of Dr. Pugsley's judgment in the matter of these three claims. It is sound and there is nothing much which can be added to it.

In respect to the losses by requisition, citation may be made from the decision of Judge Parker, United States Umpire, in a similar claim before the Mixed Claims Commission (Decisions and Opinions page 668).

"The act of Great Britain in requisitioning these British ships, and in fixing the hire thereof at substantially less than the current market hire, resulted in damages to the British owners, but such damages belong to that large class suffered by thousands of British nationals as a consequence of the war for which no redress has been provided. This act of Great Britain and the damages flowing therefrom are not attributable to Germany's act as a proximate cause."

With reference to the loss under the coal contracts, paragraph 23 of the report of Lord Sumner's Commission may be cited:—

"Again the Commission have felt bound to apply the legal rules as to remoteness of damage and particularly to disallow losses which arise only from the existence of a state of war, where the liability to loss is common to all your majesty's subjects though in the particular case it may have fallen more heavily on the claimant than on others."

These three claims will have to be disallowed.

Claim number 4, the steamship *Kendall Castle*, 6,750 deadweight, 3,885 gross and 2,438 tons net tonnage of British registry was chartered from the Kendall Castle Steamship Company Limited, owners, by this claimant company, February 12, 1913, for a period of seven years from the day of delivery at Sydney, N.S., not earlier than five days prior to the opening of navigation in the St. Lawrence River to Montreal and not later than March 15, 1913. The charter hire was at the rate of £1,518 15s. per calendar month equivalent to 4s. 6d. per ton deadweight. The hire ceased on loss of the ship. The charter contains the usual restraint of princes, rulers and people clause. The vessel was to be employed in any safe trade. She came under hire to the charterers April 11, 1913, and continued service until March 30, 1915, when she was requisitioned by the Admiralty and came on their pay at Glasgow on the 3rd April, 1915. She remained on service until the 5th March, 1916, when she was released to the Owners at Zanzibar for the trip home with Maize from South Africa. The vessel resumed Admiralty service on the 11th May, 1916, on completion of the above voyage and remained on service until she was sunk on the 15th September, 1918. Up to the 28th February, 1918, the rate of hire paid to the Owners was 11s. 5d. per gross registered ton per month on a tonnage of 3,885 and after that date 14s. per ton per month on 3,885 tons plus 7s. per ton per month on a further 415 tons in respect of unmeasured deck space excluded from the gross registered tonnage. During the whole of her service, the vessel was running under the terms of Charter Party T. 99 although the Owners refused to sign the Charter Party. Under the terms of this Charter the Admiralty covered the vessel for War Risk, the Marine Risk being borne by the Owners. From the 27th September, 1916, to the 21st March, 1917, and from the 8th August, 1917, to the 23rd December, 1917, the vessel was engaged on White Sea Service and during this service the Admiralty also covered the vessel for Marine Risk, in accordance with certain arrangements made in connection with requisitioned vessels proceeding to the White Sea.

The ss. *Kendall Castle* was torpedoed and sunk on the 15th September, 1918, and the Owners were paid £130,000 in full settlement of their claim for the loss of the vessel.

The effect of the requisitioning was to subject to the use of the British Government the entire ship and every estate and interest therein. That is in this case, the meaning of restraint of princes, rulers, and people referred to in the charter. What the claimants lost by reason of the requisition as has been already explained does not come within the category of compensation for damage that may be claimed from Germany.

The British Government dealt wth the owners only and did not recognize the interests, if any, of the claimant. The owners, however, seemed to have recognized such an interest during the period of requisition and up to the time of the loss of the ship they paid over to the Dominion Coal Companies the sum of £19,496 17s. 3d. or an average of £500 per month for the 39 months, as excess hire or the claimant's share of the excess hire at the Blue Book rates over the rate in the original charter. There is nothing in the evidence to indicate how that proportion was arrived at. We know that British Shipping companies during a certain period of the war were liable to excess profits duty ranging from 40 per cent to 80 per cent on the profits liable to such duty. It may be

assumed that the company did receive a proportionate benefit of the raise to 14s. per gross ton after February 28, 1918, and that at the time of the loss of the ship it was receiving something in excess of the monthly average mentioned. It is claimed that the Company's interest would be of greater value than what actually appeared because had the ship not been destroyed the British Government might have released her before the expiry date of the charter on April 11, 1920, and that for a period of time the claimant company would have been in a position to employ her at very profitable rates. There is no doubt, that the rates were higher at the time the ship was sunk. The average ton charter hire per deadweight ton was approximately 58s. at the end of the war November 11, 1918; the rates declined then to approximately 29s. toward the end of the first half of 1918 when there was a recovery and that by the end of 1919 the rate was approximately 47s. after which time charter rates steadily declined to approximately 17s. at the end of 1920.

I am not convinced that this ship would have been released. In the case of vessels of a sister company of claimants, requisitions were in force until December, 1919.

We have it that owners were told as early as March, 1917, that "they might take it as quite definite that the steamer (the *Lodaner*, in this case) would not be released from requisition until after the end of the war but of course as to how long after, it is impossible to say."

The British Government was sorely in need of shipping to meet direct and indirect war needs and to furnish supplies for the civilian population. The British ship owners commended afterwards for the patriotic and reasonable attitude they displayed throughout the war would hardly be expected to press for the release of ships urgently needed by the Government for a period after the war.

I am constrained to give consideration to the interest the claimant company had in the ship by reason of the amount it was receiving for excess hire at the time she was destroyed. I am inclined to consider that there may be something in the claim that the vessel might have been released from requisition before the expiry date of the charter though I do not attach much importance to that phase. I do find that the claimant's charter under the circumstances was a burden or an encumbrance on the *Kendall Castle* so as to affect the price which a purchaser desiring and able to buy would have paid on the market for her, subject to the charter, at the time she was destroyed.

Claimants had no insurance on their interest. Had the vessel survived and remained under requisition until the expiry of the charter period, the returns to the company on the basis of what they had received during the charter period would be about $47,500.00 or possibly a little more, spread over 19 months. On the other hand if the vessel had been released and had survived even a short period of employment at the current rates it would have meant considerable gain to the company but not anything like what is claimed.

With current time-charter hire toward the end of 1918 at approximately 44s. per deadweight ton per month, a few steamers were chartered for delivery after the war at 25s. per deadweight ton per month for a period of three years.

There is the risk of destruction to be considered on which the charter ended and during September and October, 1918, much tonnage was destroyed. Other risks must also be considered; destruction or injury by collision, possible cost of extraordinary repairs, the ordinary danger of ship-wreck, difficulties and delays of arranging sub-charters, failures of sub-charters and all such contingencies.

On the whole considering the different elements and having in mind the ascertained value of the ship arrived at by the British authorities I am of the opinion that $100,000.00 will fairly and generously compensate claimant for the

interest it had in the *Kendall Castle* at the time she was destroyed. I would allow interest on that amount at the rate of 5 per cent per annum from the date of loss, September 15, 1918, to date of settlement.

Claim No. 5 SS. Stigstad

This claim was submitted in the following form:—

Said vessel was chartered for five consecutive St. Lawrence seasons commencing with 1912 at the rate of four (4) shillings per ton of 2,240 pounds. Charter Party expressed that charterers should have the option of continuing this charter for a further period of three consecutive seasons *i.e.* 1917-1918-1919 by giving notice thereof to the owners or their agents by December 31, 1915. Such notice was given on April 17, 1915. (See letter of this date from John R. McIsaac to Agents Bowring & Co., New York).

Under the charter party the steamer was to be delivered to the charterers each season not earlier than three days prior to the opening of navigation in the St. Lawrence to Montreal and not later than May 15, redelivery each season at Montreal between November 1-15, or at Sydney between November 10-30, redelivery port being declared each season by charterers by September 15.

The charter party had three seasons of six months each to run when said vessel was sunk on November 10, 1916, but said Company's claim is from May 15 only in each year, the final date upon which said vessel could have been delivered under said charter party.

Prior to the 10th November, 1916 the name of said vessel was changed to *Tripel*.

Owner, The Klaveness Steamship Co., Lysaker, Norway.
Registered at Christiania, Norway.
Gross Register, 4,633 tons, net 2,488 tons, deadweight 7,100 tons.
Charter Party, February 8, 1910.
Chartered to Dominion Coal Company, Limited.

AMOUNT OF CLAIM AND PARTICULARS

	Per Month	
May 15 to November 15, 1917 6 months at 40s.=on deadweight	£14,200 0 0	£85,200 0 0
May 15 to November 15, 1918 6 months at 40s.= on deadweight	14,200 0 0	85,200 0 0
May 15 to November 15, 1919 6 months at 20s.=on deadweight	7,100 0 0	42,600 0 0
		£213,000 0 0

Less

Hire for Seasons of 1917, 1918 and 1919 on basis charter party rate of 4s—on deadweight capacity of 7,100 tons.	
Three seasons of 6 months each at £1,420 per month	£25,560 0 0
	£187,440 0 0

The charter referred to was for any safe trade, St. Lawrence, Baltic and Black Sea excluded out of season. The rate was four shillings (4) per ton of 2,240 pounds on steamers carrying capacity when loaded to L.S.F. in salt water of Dominion Coal in holds and bunkers, but not exceeding 350 tons bunkers per calendar month.

The claim as presented in a declaration of the claimant Company's official at the hearing before the late Commissioner would leave no other impression than that everything was smooth and regular with the charter. At a second hearing it developed that at the time the *Stigstad* was torpedoed in the Mediterranean the charter had been cancelled and what interest the Dominion Coal Company had in the vessel depended on the result of a suit it was carrying on in the Norwegian Courts to set aside the condemnation of the ship and consequent cancellation of the charter. The Company won the suit and on appeal was awarded $171,200 damages up to the date the vessel was destroyed. They had sued for full damages, for breach of the charter during its whole term including the seasons 1917, 1918 and 1919.

The *Stigstad* was stranded on the Swedish Coast in January, 1916. At that time to use the words of one of the Norwegian Judges "she was of considerable greater value excluding the Owners undertaking to continue under the charter party of the 8th February, 1910 with the Coal Company than with such undertaking."

The vessel was abandoned to her principal Underwriters and after having been repaired had a value of between 2,700,000-3,000,000 Kroners. The cost of repairs amounted to 468,500 Kroners, and the amount paid to the Owners on total loss was 1,100,000 Kroners. With the obligation to carry out the freight contract the value of the vessel was estimated at 800,000 Kroners in her damaged state. According to these figures, so the judgment goes, the difference between the vessel's value with and without the charter so far as could be judged would be in any case over 1,400,000 Kroners, and this interest which corresponded with the rights of the Coal Company according to the charter was by the Owner's act of abandonment as a total loss transferred to the principal Underwriters, the Steamship Insurance Company *Vidar* through the Manager O. Wikborg.

The abandonment was made in accordance with the appraisement under which the vessel was considered to be not worth repairing and at the same time and in accordance with Norwegian Maritime Law the Charter was considered as cancelled. Later this appraisement was, by Court of Appeal's Judgment of March 17, 1917, declared invalid as a condemnation as regarded the Coal Company because the Maritime Court in its appraisement and judgment had taken into consideration the freight contract in question. Thereby the act of the transfer made to the Underwriters was quashed and consequently in the opinion of the Court the original position as far as possible should be re-established, that is to say, that the Charterers' interest in the vessel which had been wrongly handed over to the Underwriters by the Owners must be made good. That opinion was varied so as to allow the Company damages up to the date of the torpedoing of the ship. The ship had been repaired and was ready for sea on July 14, 1916, under new name the *Tripel*, and new registry but really the same ownership.

Judge Hazeland of the Norwegian Appeal Court gave it as his view, approving the findings of the Trial Court, that the Coal Company's loss through the non-fulfilment of the freight contract amounted approximately to at least the Charterers' interest in the vessel meaning something over 1,400,000 kroners. He was speaking of the loss measured to the expiry of the charter term.

The Company had an interest in the vessel when it was destroyed notwithstanding what had been done by the owners in a clear attempt to get rid of a losing time charter and take advantage of high and raising freight rates for which they were afterwards muleted in damages to the date of the torpedoing, November 10, 1916. I do not know any better guide we could have to the value of that interest than the finding of the Christiania Court. Taking the value of the Khrone at 27 cents, for purposes of calculation, the ship after having been repaired had a value of between $729,000.00 and $810,000.00. If

we average these amounts we get $769,500.00. The value of the vessel in her damaged state and with the obligation to carry out the charter was estimated at $216,000.00, to which may be added the cost of the repairs, $136,495.00, bringing it up to $352,495.00. Subtracting this last amount from the value of the vessel on the average taken we get $417,005.00, the amount of the company's loss which the Judge said was the value approximately of its interest in the ship in July, 1916. The owners paid $171,200.00 damages to the date of torpedoing. I do not think that there is need of any further calculation as to the value of claimant's interest in the vessel at the date she was torpedoed. It would be approximately and nearly enough for this assessment—the value found by the court less the amount payable by the owners.

I would allow this claim at $246.000.00, with interest at 5 per cent per annum from January 10, 1920.

Claimants had no insurance on their interest.

I find that the claims of the Dominion Coal Company Limited as charterers of the ss. *Kendall Castle* and ss. *Stigstad*, fall within the First Annex to Section (I) Part VIII of the Treaty of Versailles, category (9), and that the sum of $346,000.00 is fair compensation to said company with interest as indicated.

JAMES FRIEL,
Commissioner.

March 30, 1927.

NOTE.—Dr. Pugsley was awarding $328,795.96 in the *Kendall Castle* claim. He had no information as to the value of the ship when sunk, and seems to have been of the opinion that the company was getting the full excess hire under requisition.

He was awarding $430,036.80 in the case of the *Stigstad*. He did not have information of the state of affairs between the owners and charterers at the time of the loss and he was not told of the suit and judgment in the Norwegian Courts and was given no evidence on the value of the ship. J. F.

DECISION

Case 1464

Re DOMINION IRON & STEEL COMPANY, LIMITED

This company is duly incorporated by a Special Act of the Nova Scotia Legislature being Chapter 139 of the Statutes of Nova Scotia, for the year 1899.

There are two claims.

Number *One:* For loss sustained by the said company by reason of being deprived of the use of the *Sandefjord* and the substitution of the ss. *Fram*, through having to pay an increased rate of freight to the amount of..	$ 93,878 72
Number *Two:* SS. *Storstad* (Norwegian Registry). For loss and damage sustained by the company through being deprived of the use of the ss. *Storstad*, sunk by enemy submarine in European waters March 8, 1917, before the expiration of charter party, representing charter hire which said company might have obtained had it re-chartered the steamer to others..	$1,106,640 00
	$1,200,518 72

Claim number One Particulars.

Rental of *Fram* covering 6 mos. 23 days at 14/- per ton ($3.36 at 24c. to shilling), which is period it would take her to move 139,818 tons ore..	$ 108,996 00
Rental of *Sandefjord* covering 2 mos. 2 days at 3/9 (90c. at $4.80 ex.), over which period she should have carried 139,818 tons of ore..	19,716 00
Difference in hire cost is..	$ 88,280 00
Additional cost of operations, viz: Extra bunkers, disbursements, discharges, etc., 4c. per ton over *Sandefjord*..	5,592 72
	$ 93,878 72

The claim is stated in an interesting way in claimant's brief, as follows:—

"Under a charter-party dated the 1st October, 1909, a vessel to be built by Norwegian shipowners for the company, later named the ss. *Sandefjord*, which was chartered for a period of eight consecutive Wabana seasons, commencing in 1911. This vessel was to be particularly adapted for the carrying of ore between the company's mines at Wabana, Newfoundland, and Sydney, Cape Breton. The vessel was to report at Sydney not before April 15th nor later than May 15th in each year. The charter rate was 3/9 per d.w. ton. The vessel was 'on hire' by the charterers for the seasons 1911 to 1917 inclusive. At the end of the 1917 season the vessel went off charter for the winter. During the winter (1917-18) the vessel was engaged in the carrying of relief supplies to the Belgians under charter by the owners to the Belgian Relief Commission, such supplies being transported from United States ports to Rotterdam. Shortly before the time for the vessel to report to the company at Sydney in 1918 the vessel completed her second trip to Rotterdam. Application was then made by the master to the Dutch authorities for bunkers to enable her to proceed to Sydney. Bunker supply was refused save under the condition that the vessel would return with another cargo for the Relief Commission. The Dutch authorities were dependent upon their coal supply from Germany and Germany was naturally restricting consumption and particularly restricting the use of such supplies so that they should not be used in any manner which would assist the Allies in their defence. It was claimed by the owners that they had no alternative other than to comply with the demand made, otherwise the vessel would have been tied up in Rotterdam for the duration of the war. The company made strenuous efforts to obtain possession of the vessel, arresting her on her return to New York from Rotterdam. It is explained by Mr. McInnes that by reason of the exercise, or threatened exercise, of the powers of Governments—Dutch, Germany and United States Governments—who had at different times the physical control of the operations of the vessel, they could prevent and did prevent possession being obtained by the company. Such interference, it is submitted, was a direct consequence of hostilities, even if it has not been clearly proven the consequences arose from Germany's positive act. Under these circumstances the company made the best arrangement it possibly could to minimize the loss or damage, and chartered from the same owners, the ss. *Fram* to carry ore, of which the company had urgent need, from Wabana to Sydney. The charter hire exacted in respect of the ss. *Fram* was higher than the *Sandefjord* and the company claims the right to be compensated for such excess hire. In addition the cost to the company of the operations of the ss. *Fram* in carrying the same quantity of ore as the ss. *Sandefjord* would have carried was substantially increased, for which the company also claims the right to be compensated. A statement was filed by Mr. McIsaac, who established the amount of the claim. In the consideration of this claim counsel submit that the operation of the Belgian Relief Commission were analogous to those of the 'RED CROSS.' The enemy granted the Commission special privileges which were not enjoyed by vessels of nations engaged in the war, or its nationals, or even neutrals. A flag was flown of a distinctive nature by such vessels rendering them immune from attack by the enemy, and furthermore, the navigation officers were directed through safety routes free from mines or submarine. The enemy welcomed the operations of the Commission as it relieved them of a part of the tremendous burden in providing necessities for the Belgian population. It was therefore of the utmost importance in order to enable the Commission to carry out its work, that harmonious, if not cordial, relations should exist between them and the enemy. The Commission in New York feared that a violation of the understanding made with the Dutch and German officials would be disastrous to their future operations and disrupt their work. Pressure was in consequence brought upon the American authorities, and it was clearly intimated to the company that the powers of that country would be exercised over the vessel then under its control. As is well known, during the war the United States Government exercised the powers which it had by physical possession by bottling up a very large number of Norwegian vessels in the Hudson. The company therefore abandoned its attempt to obtain possession of this vessel by legal process. Even if its action in so doing was actuated by a reasonable fear of the consequences, and not being unreasonably alarmed, following the doctrine laid down in *Jones* v. *Boyce* (I Starkey, p. 493), and other decisions of a like nature, which will be hereinafter more particularly referred to, then compensation it is claimed is recoverable."

This claim was considered by the late Commissioner who was of the opinion that it was in the same position as claims of the Dominion Coal Company Limited, for loss on account of requisitioning of vessels, increased cost of replacing same and losses on contracts for delivery. The positive act which occasioned the loss in this case not being that of Germany but of a neutral Government which supported the action of the Belgian Relief Commission which was making use of the vessel for its purposes, he did not think the claim

came within the categories of Annex (I) to Part VIII of the Treaty and was constrained to disallow it. I think his opinion is entirely right. This claim is disallowed.

Claim Number Two, ss. "Storstad"

Owner, the Klaveness Steamship Company of Lysaker, Norway.
Registered at Christiana, Norway.
Gross register, 6,028 tons.
Net register, 3,561 tons.
Deadweight, 10,600 tons.
Charter party, March 1st, 1915.
Chartered to Dominion Iron & Steel Company, Limited.
Sunk March 8, 1917.

Said vessel was chartered for four consecutive Wabana seasons commencing with 1915, at the rate of three shillings and nine pence (3/9) Br. sterling per ton of 2,240 pounds on total deadweight capacity of steamer, exclusive of ships stores on Lloyd's Summer Freeboard in salt water. Charter party expressed that delivery should be made each season not before April 15th, and not later than May 15th.

Charter party had two seasons of 6 months each to run when said vessel was sunk on March 8th, 1917.

Claim Number Two, Particulars

1917

May 15 to Nov. 15/17, 6 mos. at 40/- on deadweight of 10,600..	£127,200

1918

May 15 to Nov. 15/18, 6 mos. at 40/- on deadweight of 10,600..	127,200
	£254,400

Less

Hire for seasons 1917 and 1918 on basis of Charter Party Rate of 3/9 on 10,600 deadweight, 2 seasons at 6 months each at 1,987, 10/0 per month..	23,850
To loss and damage..	£230,550

Or in Canadian money $1,106,640.00.

According to the charter the vessel was to be employed in the iron ore trade between Wabana, Newfoundland, and Sydney, Cape Breton, for which trade the steamer was to be specially built, but charterers were to have the privilege of employing steamer should they desire in any safe trade, St. Lawrence, Baltic and Black Sea excluded out of season.

The owners reserved the privilege of putting the steamer under the British flag at any time that they so desired. The *Storstad* was torpedoed while on a voyage from Argentine to Rotterdam with cargo for Belgian Relief during the winter season 1916-1917 while off charter of the claimant company. Evidence in support of the claim as stated was heard by the late Commissioner who noted the case for an award of $533,040.00 with interest at 5 per cent per annum from January 10, 1920, the date of the ratification of the Treaty. He arrived at this amount by deducting from the amount claimed the sum of $40,560.00, which would have been payable by the claimant for war-risk premiums and divided the balance by two. He made no findings as to the value of the ship. I think his intended award is excessive.

It does not seem fair to claim that this tramp ship or carrier in 1917-1918 could have earned 40s. per deadweight ton per month. It is on the record that the owners of the claimant company were engaging ships during 1915, 1916 and 1917 the rates ranging from 6s. and 8s. to 20s. and in one or two cases at 30s. As to the value of the ship we have information outside of the record that she was built in 1911 at a cost of £57,000, her speed being about 10½ knots. As regards the value at the time of loss attention is called to the fact that it must be remembered that the charter to the Dominion Iron & Steel Company con-

siderably reduced the value of the boat, seeing she could not be employed during the whole year at market rates. Her war risk insurance was therefore covered accordingly, and at the time of loss she was insured for Kr. 3,000,000 (about $810,000.00) plus Kr. 700,000 (about $189,000.00) interest, that is to say the extra profit the owners expected to make during the time the boat was free of claimants' charter, between the Wabana seasons. This insurance equals $94.45 per deadweight ton.

This is the ship that rammed the *Empress of Ireland* in the dreadful disaster in the St. Lawrence on May 29, 1914. She was sold then by order of the Court and brought $175,000.00. The Norwegian Maritime Court, or one of the Judges, in the case of the *Stigstad* found, as I calculate it, the total damages to the Charterers for the loss of the use of the ship for four seasons of six months each 1916-1917-1918 and 1919, to be approximately, $417,000.00. These damages up to November 10, 1916, could be absolutely ascertained, after that it would be a matter of estimating. In this present claim the loss would be for two similar seasons exactly, 1917 and 1918, similar trade and similar charter except that the rate in the case of the *Storstad* would be 3d. lower. On the basis of the Court's finding as to damages in the *Stigstad* case, the calculation for the damages in this case results at, approximately, $340,000.00. I think that the *Stigstad* was a more valuable boat per ton than the *Storstad*. The value of the *Stigstad* repaired from the records of the trial appear to have been about $114.00 per deadweight ton in July, 1916. The *Storstad* when sunk may have been worth about $1,250,000.00.

Claimants' charter was an encumbrance on the ship giving them a property interest upon which they had no insurance. No proof was submitted of claimants' profits from the steamer or of her earnings for them during the seasons 1915 and 1916.

Considering the factors that enter into the calculation of the value of a charter at the time of the loss, including danger from mines and submarines, I think that the sum of $300,000.00 will be fair compensation in this case.

This claim falls within the First Annex to Section (I), Part VIII, of the Treaty of Versailles, category (9), and I find $300,000.00 fair compensation to the Dominion Iron & Steel Company, Limited, with interest at the rate of 5 per cent per annum from the date of loss, March 8, 1917, to date of settlement.

JAMES FRIEL
Commissioner.

November 30, 1927.

DECISION

Case 1465

Re Nova Scotia Steel & Coal Company, Limited

This company is duly incorporated by special Act of the Legislature of Nova Scotia, chapter 137 of the Acts of 1898 and amending Acts.

Its claim is on account of the loss of the following steamers:—

SS. *Tellus* (Norwegian Registry), which was sunk by enemy submarine in the Mediterranean when under charter to the claimant company with 4 years 7 months and 10 days of her charter-party unexpired..	$4,586,549 50
SS. *Themis* (Norwegian Registry), chartered March 21st, 1910, to the claimant company, which charter was amended on May 25th, 1917, for three seasons of 9 months each, was sunk in the Mediterranean by enemy submarine on or about October 12th, 1917, while employed by Furness-Withy Co.	1,689,844 80

SS. *Wacousta* (Norwegian Registry), chartered June 9, 1913, to the company, sunk by submarine about November 8, 1915, when there were three years 1 month and 23 days of her charter-party unexpired..	1,065,926 40
SS. *Fimreite* (Norwegian Registry), chartered April 16, 1915, to the company, sunk by submarine about July 23, 1915, when there were four months and three days of her charter-party unexpired	74,360 00
	$7,416,680 70

These claims were heard by the late Commissioner The Honourable William Pugsley, K.C., LL.D., at sittings in Montreal in the months of June and September, 1923, who left a draft judgment of his decisions in the different cases. I am reviewing his findings.

SS. Tellus

Gross tonnage, 7,395.
Net tonnage, 4,131.
Deadweight tonnage, 12,800.
Built in 1910.
Sunk August 31st, 1916.

The claim is for loss and damage sustained by the claimant company through being deprived of the use of the ship for the unexpired charter period.

Charter value at 40s..	£ 25,600	per month.	
Total Charter value, Sept. 8, 1916, to Dec. 15, 1918: 27 mos. 7 days..	£697,173. 6. 8		
Total Charter rate, Sept. 8, 1916, to Dec. 15, 1918: 19 months 7 days at £2,031.5.0... £39,067.14.2			
8 months at £1,328.2.6 .. .. .. 10,625. 0.0			
	£ 49,692.14. 2		£647,480.12. 6
Charter value at 20s..	£ 12,800	per month.	
Total Charter value, Dec. 15, 1918, to Apr. 10, 1921: 27 months 25 days..	356,266.13. 4		
Total Charter rate, Dec. 15, 1918, to Apr. 10, 1921: 16 months at £2,031.5.0 .. .. .. £32,500.0. 0			
11 months 25 days at £1,328.2.6.. 15,716.2.11			
	£ 48,216. 2.11		£308,050.10. 5
Total loss..			£955,531. 2.11

The claim it will be noticed is for the amount of the difference from the date of the loss until the end of the charter term between the amount calculated at current rates of freight and the amount claimants had to pay the owners for the use of the ship under the Charter and no proof was submitted of what the Nova Scotia Steel & Coal Company were actually making in profits under subcharters or otherwise. Dr. Pugsley found quite properly that the charter was an encumbrance on the ship and that claimants, therefore, had a substantial property interest in her when she was destroyed, and that they would be entitled to compensation for the financial loss sustained by reason of her having been sunk by enemy action. He agrees with claimant's contention that the damages should not be based upon the profits which the Company would have made to what they might have made in normal times, and that they should be based on the then existing conditions but at the same time consideration must be taken of all the elements which fairly would be taken into consideration by a Jury in endeavouring to fix the damages which should be allowed. There is the possibility of destruction or injury to each vessel by collision; there is the possible cost of extraordinary repairs and there is the ordinary danger of shipwreck; in general there is all the normal marine risks also difficulties and delays of arranging sub-charters, failures of the sub-charters, and all those contingencies which almost always

arise to prevent the full realization of expected profits in large enterprises, which would tend to reduce the sum total of what would have been received had everything gone well.

Consideration too must be given to the fact that the claimant Company was not engaged in the ordinary steamship business and was not organized for the purpose of chartering vessels for hire. Such vessels as were under their control were chartered by them for the specific purpose of carrying out their business enterprises and the sub-chartering was an expedient resorted to only when they had on hand a surplus tonnage and general business conditions were poor.

While the evidence tends strongly to support the claimant's contention that they should be re-imbursed for the loss of these vessels at a rate based upon the prevailing charter rates during the unexpired charter periods in each instance, yet it must also be borne in mind that were this to be allowed to the full extent of the claim which had been made, a situation would arise wherein charterers of a vessel would receive compensation in respect of the loss of a vessel greatly in excess of compensation which might be awarded to the actual owner for the loss of his vessel.

He is of the opinion that the amount claimed is excessive, and that if it were to be reduced by 50 per cent the claimants would be adequately compensated. The claimants allege (it is said in this judgment) that but for the destruction of these vessels they would have been able to recharter them at the rates above stated, and as it was the practice for the party so chartering to insure the vessels against war risk, an amount has been estimated in respect of each of these vessels as to what would have to be paid in respect of war-risk premiums in the event of their being so sub-chartered, and which would have to be deducted from the amount claimed in respect to each vessel.

The insurance premiums for the un-expired term for the *Tellus* would have been $447,772.20. He deducts this amount from the amount claimed $4,586,549.50 and halves the balance allowing claimants $2,069,388.65 in respect of the loss of the *Tellus* with interest at 5 per cent per annum from the date of the Treaty of Versailles, January 10, 1920. He does not consider or make any finding as to what was the actual value of the ship when she was destroyed. The amount thus awarded the charterers would be equivalent to $161.00 a deadweight ton. In my opinion even under the facts as presented to Dr. Pugsley and for the reasons given in the judgment itself, this would have been an excessive award.

There are other features which developed later in this case that call for attention. The claim as submitted by counsel (Mr. McInnes) to the late Commissioner at the hearing in September, 1923, verified by claimants' witness left the impression that the case was similar to that of the ss. *Themis* also sunk by enemy action while under the Company's charter and a sub-charter from the Company. "The ship" (the *Tellus*), so stated the witness, "was chartered permanently for the use of the trade and then eight months practically covered the time we could use her for carrying coal and ore. Four months we had to get business for her, and in the winter time it always costs more to operate, and that was the bargain we made with the owner. It was a great advantage to him to have his ship employed during the four months instead of having to make delivery to us again in the spring, consequently there were two rates, 2s. 1½ for the four months in the winter. *We had full control of the vessel*, subject to the terms of the charter party, subject to the conditions of the charter party. The owner appointed and paid the crew, provisioned the vessel and paid for the stores. We supplied the bunker coal and paid all the port charges, and the cost of loading the vessel *and had control* of the ship according to the terms of the charter."

"Q. Her movements were under the direction of your company?

"A. Mr. Markey, K.C.: For all practical purposes we had control of it.

"Witness: I do not know that there is anything more to be said than in the case of the *Themis*. The time unexpired was from the date of the sinking and with reference to the charter terms as distinguished from those of the *Themis* the witness said that in this boat we had it for the whole twelve months.

"Mr. McInnes, K.C.: She had been aground and came off, and that is the reason her name was changed to the *Elizabeth IV*.

"Q. Commissioner Pugsley: I suppose there was no sub-charter existing at the time she was torpedoed?

"A. Mr. McInnes, K.C.: No, sir, there was no sub-charter at the time she was torpedoed, and there is no war risk insurance. We had no war risk insurance.

"Q. Commissioner Pugsley: Has Mr. Sedgwick verified these figures, the different amounts he gave for each year, making up the total of $4,586,549.50.

"A. Mr. Markey, K.C.: It is set forth in detail in the claim."

At a rehearsing of these claims in November, 1926, the present Commissioner discovered mainly by accident that the time the *Tellus* was torpedoed she was not under the control physical or otherwise of the Nova Scotia Steel & Coal Company Limited, but that she had been condemned, reconditioned and transferred to new owners under a new name and was being operated by them regardless of the charter to the Nova Scotia Company which had been cancelled, in fact, if not by right.

All the interest of the Nova Scotia Company in the *Tellus* the time she was sunk was involved in a lawsuit between the company and the owners. The documents called for and filed after the hearing disclose the real facts.

The *Tellus* was rechartered by the company to Barber & Company Inc., of New York, in 1914, under Charter Party dated August 20, and taken delivery of by them August 28, 1914. (Charter rates not given). Under this charter and extensions ship was due for re-delivery at United States port May 28, 1916; sailed from New York for Vladivostock on August 21, 1915, via Panama Canal, ran short of fuel and had to burn portion of cargo to be enabled to reach Namure, Japan, where she bunkered and stranded on sailing from that port. She remained aground with wreckers working until January 16, 1916, when she was floated and proceeded under her own steam on January 21, 1916, to Hansaki, and later to Hakodate, where survey was made on January 31, 1916, and ordered to dry dock for further examination. Cargo discharged February 11th and ship drydocked February 12, 1916. On survey was declared a constructive total loss; some repairs were made and ship was taken over by underwriters. On March 28, 1916, proceeded to Shanghai under her own steam where repairs were completed and sailed on July 4, 1916, under her new owners for Luban under her new name *Elizabeth IV*—she loaded for a European port and was sunk by enemy submarine in Mediterranean Sea. In the meantime Nova Scotia Steel and Coal Company, Limited, instituted a suit against Wm. Wilhelmsen et al for wrongful abandonment and for damages, the sinking of the steamer, of course, having prevented owners returning the steamer to charterer on her arrival at an European port.

The matter was in the hands of the company's Norwegian counsel for action as early as April 29, 1916.

The claim of the Nova Scotia Steel and Coal Company is stated in the summons in the Norwegian Court as follows (translation furnished):—

MARITIME COURT SUMMONS

According to Charter Party of 21st March, 1910, Mr. Wilh. Wilhelmsen as agents chartered on behalf of the owner steamer *Tellus* to Nova Scotia Steel and Coal Co., New Glasgow, Nova Scotia, for a period of 9—nine—years to count from the day the steamer was placed at the disposal of the charterers, with the option for the charterers to prolong the

charter party with further 1—one—year so that the period of the charter party would be altogether 10 years. The freight was stipulated at £2,031.5.0 per calendar month, in this way however, that the rate of freight for 4 months in the year, to wit from 15th December to 15th April only had to be £1,328.2.6. The charterers, who had stipulated leave to recharter, had the right to employ the steamer in trade between the ports in British North America, the Caribbean sea, United States, West Indies, Central America, the Mexican Gulf, South America, Europe, Africa, Asia, Australia or New Zealand not however to carry contraband of war or to trade on blockaded ports. Besides this the charter party had arbitration clause and a provision that fine for the non-fulfilment of the contract to be fixed according to the loss suffered.

Whilst under this charter party the steamer grounded in the autumn, 1915, on a voyage from New York to Vladivostock. At the beginning of January, 1916, however, the steamer was floated, when she proceeded to Hanasaki, whence she proceeded to Hakodate. On the 31st January the steamer was here surveyed by two gentlemen nominated by the Norwegian Vice-Consul and on their recommendation discharged and docked. On the steamer having got into dry-dock the same surveyors were summoned afresh at the instigation of the owners to further survey the damage sustained and describe these, as well as give an estimate of the cost of repairs, etc., the surveyors in the requisition being expressly desired to "take into consideration that the steamer in question at present is fixed by charter party at a rate of freight of £21,562.0.0 a year and that this charter party is still running for about 6 years."

In one of the surveyors' report dated 17th February the cost of repairs was appraised at Yen 418,316 with an estimate time for repairs of 100 working days, and the steamer's value in damaged condition was estimated Yen 220,000—specially taking into consideration the aforementioned charter party and that the owners on account of this "did not benefit from the high freight."

No estimate was given of the steamer in repaired condition nor was this requested by the owners who on the contrary occasioned a fresh statement from the surveyors whether these "advised repairs," being again requested to keep in mind the aforementioned charter party and the fact that the steamer according to the said charter party "was fixed for the next 5 years at a low rate of freight."

In reply to this request the surveyors on the 18th February made out a statement in which they say that, the steamer taking into consideration that she is under charter party, at a very low rate of freight, etc, is according to their opinion not worth repairing but must be considered as a total wreck.

Referring to this statement the owners and the recharterers declared the charter party cancelled.

As soon as the charterers, who were not summoned to the surveys, etc., were informed of this, they protested against the condemnation and the legality of same as well as against the cancelling of the charter party, demanding that the steamer be repaired and after the repairs had been finished commence running to complete her charter party.

This however the owners declined to do and the new company, which the interested parties through the underwriters for the hull had formed for taking over the steamer, declared the charter party for not concerning them.

In order to have the supposed illegality or want of legal force of the condemnation or condemnation statement towards the charterers substantiated and to get the liability, etc., of the owners, in consequence of the breach of the charter party that had taken place, fixed and decided through the owners' co-operation at arbitration or of the present court or by the Maritime Court estimate I hereby on behalf of the charterers, Nova Scotia Steel and Coal Co., Ltd., summon the charterers, ss. *Tellus*, owners Wilhelmsen Steamship Co., Ltd. Nov. 14, 1917.

The defendants secured several delays of the trial waiting apparently for the judgment of the Norwegian Court of Appeal in the case of the Dominion Coal Company against the Klaveness Steamship Company owners of the ss. *Stigstad*. This was a similar case against the same owners. The *Stigstad* too had been condemned, reconditioned, and transferred to another company and was operating under a new name *The Tripel*. The Dominion Coal Company's charter had been cancelled all quite in the same way as in the case of the *Tellus*. The Trial Court had quashed the condemnation and awarded damages for the unexpired term of the charter. The Norwegian owners had been attempting to circumvent conditions under which they were bound to long charter-parties at the rates current before the outbreak of the war. As the increase of expenses caused by the war successively made itself more and more felt (quoting from one of their reports) these conditions continually grew more unmaintainable,

and as the charterers proved to be unwilling to raise the freights by consent to a rate which made it possible to sail without loss, the owners foresaw the possibility of conflicts with the charterers. To guard their company against an embargo on the whole fleet in eventual conflicts, the company's directors and board of representatives found it necessary gradually to divide the company into single ships companies. The report refers more particularly to the spring and summer of 1917. It is quite evident that they had already commenced to pursue that course in the cases of the *Tellus* and the *Stigstad*.

The judgment of the Court of Appeal in the *Stigstad* case was delivered on the 11th of December, 1919. It upheld the judgment of the High Court quashing the condemnation decision, and holding that the owners had been under the obligation to repair the steamer and that their not repairing it was a breach of the charter-party. As regards the extent of the indemnity the decision was that it should be calculated to the day prior to the torpedoing, because from that day the performance of the charter-party by the owners was rendered impossible. The loss of the steamer could not in any way be ascribed to the owners. The owners were therefore required to pay the loss the company suffered through the non-performance of the charter-party in question from such time after completed repairs the *Stigstad* could have been placed at the disposal of the company at Sydney, Cape Breton, and until she was torpedoed, the estimated amount to carry interest at the rate of 4 per cent per annum from the 26th June, 1917, (the date I think of the entry of the judgment in the High Court. The *Stigstad* was sunk on November 10, 1916), together with plaintiff's costs in the High Court and the Court of Appeal, fixed at 5,000 kroner—about $1,350.00.

Negotiations to settle the *Tellus* case had been set on foot some time after the judgment of the High Court in the *Stigstad* case in May, 1917. The plaintiffs were represented by an eminent American law firm, a member of which had been in Norway, where too their case was in the hands of eminent counsel. Follows a brief statement by the American lawyer of the settlement negotiations and final adjustment.

"At the conclusion of the writer's discussions in Christiania, Wilhelmsen virtually offered £50,000 in settlement. Mr. McDougall, after going over the matter fully with the writer upon the latter's return in August, 1919, felt that we should stand out for at least double that figure, say $500,000. The writer on his way through London in returning from Norway had discussed the matter with Sir Osborn G. Holmden of Messrs. H. Clarkson & Co., who, although Wilhelmsen's agent in this matter, was at the same time most friendly to Scotia. Mr. McDougall and Col. Cantley were scheduled for London in the fall of 1919. As the result of the writer's efforts and those of Messrs. McDougall and Cantley in London, Wilhelmsen ultimately offered to pay £50,000 which Mr. McDougall decided to accept. But, unfortunately, before the matter could be closed, the Norwegian courts rendered a decision in the somewhat similar *Stigstad* case to the effect that the charterers' right of recovery of damages representing loss of profits for such a breach of charter, was limited to the period from the time when the steamer was repaired or should have been repaired down to the time when she was lost, the *Stigstad*, like the *Tellus*, having been sunk during the war after the breach. Ultimately, in July, 1920, Scotia accepted £35,000 in settlement, consummating the matter by negotiations through Holmden in which the writer had no part."

It will be noted that the $500,000.00 the highest amount for which claimants were standing out, covered all damages calculated to the end of the charter term, in other words, every interest claimants had under their charter from the time the ship could have been returned to them after repairs, about the last of May, 1916 until the end of the hire, being the same damages as they are claiming before this Commission, less what might be allowed for the three months, approximately, intervening before the date the ship was sunk. It can be taken for granted that those experienced shipping men and lawyers carefully estimated what damages could be recovered for loss of the charter under the conditions as they existed in May, 1916 and had in mind among other things its likely termination at any time by Act of War, a fact it had been abundantly

proved, the uncertainty of the duration of the war, the prospect that values and freights would decrease soon after the war and the many other contingencies that would enter into the consideration of the value of the charter at the time that the ship was converted or repossessed by the owners.

As to the value of the ship she was built in 1911 for carrying coal and ore, at a cost of £63,000 sterling. When she stranded in January, 1916, she was insured in Norway for Kr. 1,150,000 equivalent to about £63,000 sterling, which states her master, "is her full insurance value."

The condemnation statement was based on the following figures:—

The value of the wreck.. .. ..Yen 220,000	£23,400
Cost of repairs.. .. ..Yen 418,316	44,000
Total..	£67,400
Value of the repaired steamer..	63,000
Difference..	£ 4,400

It is alleged in defendant's pleadings that in a later survey during the repairs at Shanghai it was discovered that the damage to the steamer was far more serious than was anticipated at Hakodate; she had sustained a twist, which it was claimed would mean an increase of £54,000 in the cost of repairs. In the valuation referred to of the surveyors they had acted on their instruction to take into consideration the important fact that the owners were subject for nearly six years to an unprofitable charter. Later when the ship's name was changed to *Elizabeth IV* and she was purchased ostensibly by new owners, the purchase price entered in the Norwegian Ships Register was £61,000. It is not stated that the additional repairs were ever made.

I was inclined at first to the opinion that claimants had no interest in the ship, at the time she was torpedoed, for which they could claim compensation. I am now of the opinion that with the condemnation set aside their charter interest was re-established, and that they are entitled to compensation for the value thereof by reason of its destruction through enemy action. It is difficult to find that there was a prospect of their again getting control of the ship had she not been sunk or determine how long a time it would have taken to so get control. It leads back to considering the damages they claimed against the owners when they had a reasonable prospect of a settlement of their claim in full covering the whole unexpired term of the charter, the lesser amount they were willing to accept and the amount they did accept covering the shorter period. It is most difficult in the circumstances to arrive at the reasonable market value of the ship when destroyed. Had it not been for the stranding and the doubt thrown on the repairs necessary to re-condition the ship, her value might have been estimated by the valuation of the British Admiralty on her sister ship the *Themis* 9 months later, namely, £350,000 to cover all interests. On the whole I am inclined to think that the claim made on the owners for a settlement in the first place was not exorbitant and I would allow compensation herein at the difference between that sum and the sum received or in round figures, $300,000.00, together with interest at the rate of 5 per cent per annum from the 10th day of January, 1920, the date of the ratification of the Treaty of Versailles, to date of settlement.

SS. Themis

Gross tonnage, 7,402.
Net tonnage, 4,134.
Deadweight tonnage, 12,800.
Built in 1910.
Sunk October 12, 1917.

The basis of this claim is for loss and damage sustained by the Nova Scotia Steel & Coal Company, Limited, through being deprived of the use of the ss. *Themis* for the unexpired charter period as follows:—

1st Period	
October 12, 1917 (date of sinking), to December 1, 1917 (date of expiration of sub-charter to Furness, Withy & Company Limited), 1 month and 18 days at £10,880 per month..	£ 17,408
2nd Period	
December 1, 1917, to January 5, 1918, from termination date of Furness Charter until expiry date of "1917" season, viz: January 5th, 1918, 1 month and 5 days at £21 968 15.. .. .. (This is the difference between the amended charter rate after termination of Furness charter and the rate of 40/- at which steamer could have been replaced for that period.)	25,628. 8.4
3rd Period	
May 15, 1918, to January 5, 1919, 7 months and 20 days at £21,968.15. (This is the difference between the amended rate, viz: £3,631.5 and the rate of 40/- at which steamer could have been replaced for that period.)	168,427. 1.8
4th Period	
May 15, 1919, to January 5, 1921, 15 months and 10 days at £9,168.15	140,587.10.0
	£352,051. 0.0

Being difference between Amended Charter rate £3,631.5 and the rate of 20/ at which steamer could be replaced for balance of charter.

The late Dr. Pugsley heard evidence in support of the claim. He found quite properly that the charter was an encumbrance entitling claimants to a property interest in the ship at the time she was destroyed. He was of the opinion that the claim in respect to the first period should be reduced by 25 per cent, and in respect to the other three items by 50 per cent. He would deduct the amount of the insurance received, $480,000.00, the result being that his intended award in respect to the *Themis* amounted to $346,970.00 with interest. He made no finding as to the value of the ship. I do not agree.

The ss. *Themis* was built in Great Britain and completed in 1911. She was owned by a Norwegian corporation. While she was under construction, on the 21st day of March, 1910, Wilh. Wilhelmsen, agent for the owners, chartered her on their behalf to the Nova Scotia Steel & Coal Company Limited, of New Glasgow, N.S., for a period of nine consecutive seasons commencing in 1911, not before the 1st day of April or later than the 15th of May, with the option to prolong the charter for a further period of one season. The charterers had leave to recharter. The freight was stipulated at £2,031.5.0 per calendar month, equal to 3s. 3d. nearly. The owners provided and paid for all provisions and stores, wages for the captain, officers, staff and crew, and the charterers provided and paid for the coal, port charges, etc. The ship was to be redelivered to the owners (unless lost) at Philadelphia or Baltimore between December 15th and January 5th. The charterers had the right to employ the ship in any safe trade between ports in British North America, the United States, West Indies, Central America, Caribbean Sea, Gulf of Mexico, South America, Europe, Africa, Asia, Australia or New Zealand, the steamer to be employed in neutral trades and not to be called upon to carry contraband of war or to trade to ports in a state of blockade. (Clause 35.)

The Nova Scotia Company intended to use the ship in the transportation of steel and coal on the St. Lawrence River, where navigation is closed for the three winter months. The owners about the same time entered into a charter with the Gans Steamship Line for the nine consecutive winter seasons com-

mencing with the season 1911 and 1912, at a charter hire of £1,562.10.0 per calendar month (2s. 6d. per deadweight ton). In practice the two charters with their overlap provided for the use of the steamer through the year giving the owners only a sufficient margin for the westbound voyage to make delivery to the Gans Steamship Line within the time stipulated for in its charter.

The *Themis* charter is similar to the charter of the *Tellus*—same date, same guaranteed tonnage, 12,500, running for the same number of years, except that it is for the season May 15 to January 5th while the term of the *Tellus* is for the full 12 months, the rate being reduced to £1,328.2.6 during the months from the 15th December to the 15th April, same restrictions.

The rise in freights after the war broke out made the claimants' charter a valuable one, more or less so according to their good fortune in sub-chartering. No evidence is furnished in that regard.

It is on the record that for the summer season of 1915 the company had chartered the *Themis* to Barber & Company of New York for eight months expiring December 28, 1915, at a profit of over £5,000 a month. The sub-charterers were not able to redeliver the ship in time for the Gans Company period and the Nova Scotia Company were mulcted in damages to the amount of $365,165.17 in a suit in the American Courts.

The Furness Withy charter referred to in the claim was entered into on the 24th of May, 1917, at the rate of £26,880 per calendar month commencing from the time the steamer was placed at the disposal of the charterers and *pro rata* for any fractional part of a month until redelivery between the 1st and 15th days of December, 1917. She was to be employed within the full trading limits in voyages that were approved by the Norwegian War Risk Association, the charterers to keep steamer covered for War Insurance on a valuation of £350,000 without expense to owners during the charter, for account of owners. In consideration of their agreeing to waive the War Clause No. 35, the rate of hire payable by the Nova Scotia Steel & Coal Company, Limited, to the Norwegian owners was raised to 25s. on 12,800 tons during the currency of the Furness Withy charter. The War Insurance was apportioned £250,000 to the owners and £100,000 to the Nova Scotia Steel & Coal Company Limited. It was also agreed that the Nova Scotia Company pay the owners 2s. 6d. monthly on 12,800 tons for the balance of the steamer's charter-party as extra hire ceased.

The business of subletting the steamer to Furness Withy & Company Limited was conducted by H. Clarkson & Company, the London agents for both the Norwegian owners and the Nova Scotia Steel & Coal Company.

The *Themis* was sunk by submarine on October 12, 1917, 20 miles north of Cap Bon (Tunis) while on a voyage from Karachi, India, for Marseilles with a cargo of grain presumably for the Allied Armies in France.

It is known and appears in the records of other claims before this Commission that the Furness Withy Company represented the British Admiralty and their charters were similar to those made under requisition agreement, that is to say, they provided for the Blue Book rates of hire and insured the owners with War Risk Insurance to the value of the ship, "being the agreed market value on the day that the vessel commenced to load and to take the place of the amount covered by owners' policies on hull and machinery, freight; outfit and/or disbursements; and/or on any other insurable interests which are in force at that time, including also any amounts which are carried at owner's own risk, always provided that the total of these does not exceed the market value as above. Owners should therefore arrange with their underwriters to suspend their policies on all interests referred to above during the period of assumption of risk by the Ministry of Shipping."

Compared with the *Tellus* the charter of the *Themis* expired on the same date. The term of the *Tellus* charter was for 10 full years at £2,031-5 for nine months and £1,328-2-6 for the three months—the winter seasons. The *Themis* charter was for approximately 8 months in the year for 10 years at £2,031-5. The *Tellus* was re-possessed by the owners or converted in some way as of date May 31, 1916. The Nova Scotia Steel & Coal Company Limited, with a good cause of action established for damages in a similar case, sought £100,000 the limit of their claim for all damages for being deprived of the use of the ship for the balance of the charter period and were willing to accept £50,000. The *Themis* was sunk October 12, 1917, when her charter had 32 months 9 days less time to run than had the charter of the *Tellus* when claimants lost the use of that boat. It may be conceded that the *Themis* would be of the greater value per ton at the time she was sunk. On the other hand the submarine campaign was at its height, and it would seem improbable that the boat would survive the charter period. The charter however clearly was an encumbrance on the ship at the time of her loss and had a substantial value. That value, it seems to me under all the circumstances was fully covered by the insurance collected.

The *Themis* was completed in 1911, and while her cost is not given we may assume it was the same as that of her sister ship the *Tellus* viz., £63,000. The average life of these tramp steamers is given at 20 years, and during the latter half of the period they require extensive repairs. The market value of the ship for insurance agreed on in the Furness Withy charter was $1,717,-135.00, which works out approximately to $137.40 per deadweight ton. We have instances of insurances of other Norwegian vessels about the same time at $153.00 per deadweight ton. We have records of sales of British vessels between 1916 and 1919 at from £13 to £21 per deadweight ton. There is a record in Lloyd's Register of a ship sold to the Norwegians in October, 1916, for £33.12.1 per deadweight ton, and one sold to them in March, 1919, for £21.0.2. The Vickers-Armstrong Company were building steel ships in a Montreal plant between the fall of 1916 and the spring of 1917 at $125.00 per deadweight ton contract price. The difference in market values between Norwegian ships and British ships had gradually diminished. The Norwegian Government and the Norwegian War Risk Insurance Association (which was government controlled), and the British Government worked together in 1917 supervising and controlling Norwegian tonnage. Norwegian shipping suffered the greatest losses.

Claimants' expert on values who confronted with the records in other cases came down one-third, valued the *Themis* at $2,187,500.00 or $175.00 per deadweight ton. This does not affect my opinion of the British valuation and that value had not increased after the date of the Furness Withy charter since charter rates at the time of the loss while high, were lower than they had been several months earlier and were declining.

The Gans Steamship Line, American charterers of the *Themis* for the winter seasons, prosecuted their claim against Germany before the Mixed Claims Commission (United States and Germany) and their interest in the *Themis* was assessed by the American Umpire at $467,000.00, for the loss of three winter seasons of 94 days each. The American charter had 282 days carrying time to run. Claimants' charter had, approximately, 773. It was urged on this Commission that my assessment should be in proportion to that of the American Commission. I do not agree. The Gans Steamship Line were in the shipping business and could and did apparently arrange for mixed cargoes which brought them great profit. They were paying the Norwegians 3s. 6d per deadweight ton per month. The Nova Scotia Company were paying the owners 25s. under the Furness Withy Charter, and would no doubt have to similarly

increase the rate to continue the ship in profitable employment had she survived. The restrictions in the charter kept her out of trade with blockaded ports. The British Isles were declared blockaded by Germany and a submarine campaign was being waged to enforce the blockade, and the same thing applied to European ports generally. This condition, of course, applied also to the American charter, but not to such a degree. The American Commission had adopted the ruling in claims of charterers that the first thing to do was to ascertain the value of the ship, and then establish the relative interests of the owners and the charterers once it was established, as it is in this case, that the charter was an encumbrance on the vessel.

Judge Parker, Umpire in the Mixed Claims Commission, does not in his judgment find the value of the ship at the time she was destroyed, but he must have had testimony in their record to go by. There was much testimony given as to the profits which the Gans Steamship Line would have made under their charter had the *Themis* not been lost. I think it could be fairly assumed that the American Umpire knew of the Insurance moneys received by the owners and the Nova Scotia charterers under the terms of the Furness Withy charter and that he also knew of the British Admiralty's undertakings in respect to such charters. The owners got £250,000, and the Nova Scotia Company £100,000 and adding the award of the Gans Steamship Line we get $2,184,000.00 approximately, in my opinion considerably more than the whole value of the ship.

I find that in the case of the *Themis* claimants' loss was fully covered by the insurance, and I would dismiss this claim.

The Wacousta

Gross tonnage, 3,521.
Net tonnage, 1,998.
Deadweight tonnage, 5,600.
Built—
Sunk, November 8, 1915.

The basis of claim is for the loss and damage sustained by the Company through being deprived of the use of the steamer for the unexpired charter period as follows:—

Charter value per month 25s.	£ 7,000
On deadweight of 5,600 tons, Charter rate per month. . . .	1,120
Loss per month.	5,880
Loss per 37 months, 23 days.	£222,068

Testimony in support of the claim as stated was heard by the late Commissioner who noted it for an award of $484,736.00 arrived at by deducting $96.451.20, the amount of war risk insurance premiums the company would have had to pay during the period of the charter term from the amount of their claim $969,475.00 and dividing the remainder by two. He made no finding as to the value of the ship at the time she was destroyed. The intended award works out $86.55 per deadweight ton to the charterers and I think it excessive.

The *Wacousta* was chartered to the Nova Scotia Steel & Coal Company, Limited by P. A. Gron, of Sandefjord, Norway, under charter dated June 9, 1913, for the term of 60 calendar months from the date of her delivery January 1, 1914, to be employed in any safe trade, excluding the St. Lawrence, Baltic and Black Sea out of season. The rate of hire was £1,120 (4s. per d.w.t.) per calendar month commencing January 1, 1914, charterers to have the option of sub-letting the steamer, remaining responsible to the owners for fulfilment of conditions in the original charter. The charter is in the form of the 'Time

Charter party in use by the Nova Scotia Steel & Coal Company, Limited. It contained the usual clause in respect to the restraint of Princes, Rulers and people, and the hire terminated on loss of the vessel.

The *Wacousta* was sunk by enemy submarine November 8, 1915, in Latitude 33.46 N., Longitude 24.43 E. while carrying 3,964 tons of cars from Pictou, N.S., for Vladivostock, the property of the Eastern Car Company, a company owned by the Nova Scotia Steel & Coal Company. The current market hire of vessels at the time this ship was sunk was more than the charter rate claimants were paying under the charter, and there is no difficulty in finding that the charter was then an asset to claimants giving them a property right in the vessel. It is for this Commission to determine what was the value of their interest.

The first question, therefore, to determine is what was the fair merchantable value of the ship free of charter at the time she was sunk. The expert called by claimants swore that the steamer, in his opinion, was worth $125.00 per deadweight ton, which would give her a value of $700,000.00. He stated that she had been built in 1909, and that the normal life of such a vessel would be 20 years. (It is written on the charter "This charterparty to be a direct continuation of C/P dated October 25, 1907").

Witness questioned by the Commissioner testified to the fact that ships were being offered for sale in the early part of 1915 at very low rates. British ships that were not requisitioned at the time; that Norwegian vessels operated at a less cost. "If this vessel owner had been free, and he could have chartered the vessel at that time, in 1915, at 10s. or over 10s. a ton. I say he would have taken it for an unlimited period, and would have taken a chance as to whether the war was going to continue or not." He did not think "the vessel on the 8th November, 1915 could obtain for a 2½ years' charter more than the requisition rate for British vessels for the war period, about 11s. a ton, which the British ships got at that date. . . . . Well, in 1915 I said I think any ordinary owner would have taken 11s. a ton for the period of the war, without hesitation."

Referring to the year 1915, in another case, this same witness said "There were vessels built in England at that time, lots of them, standard types, at anywhere from $75 to $100 a ton during the war, and they were afterwards sold. . . . . In 1915, when that vessel was sunk (referring to another ship) the ship owners on the other side were not prepared to bid, or to make a bid for operations. The government, as a matter of fact, did arrange to subsidize ship building yards, and they did build lots of tramps for $75 to $100 a ton."

This witness distinguished between time charters and short-time charters. "In 1915, the owners would have said, 'Yes, you can have my vessel indefinitely for 11s. a ton, as long as you like, and I will take a chance,' but the merchant would very seriously consider the risk he was taking in taking the vessel for any long period at the rate that was current at that date of 21s. Everybody expected a collapse immediately the war was over. In 1915, those conditions (later conditions) did not apply; there was no expectation that the war would continue, that the prices would very materially advance in addition to those prices, and that the rates of freight would be maintained, so that the risks would be very considerable in taking the vessel for any lengthy period, even the balance of three years."

Values from the records have already been cited, and the fact has just been referred to that in Montreal, a year after this boat was sunk, steel ships were being built at $125.00 a deadweight ton. We have on our records the case of the Canadian (New Glasgow) steamer *Pontiac*, 5,700 deadweight tonnage, sunk in the Mediterranean, April 28, 1917, while under requisition by the British Government. The British Admiralty settled with the owners for the

amount of the indemnity. The ship was an extraordinarly well-built ship constructed in 1903 at a cost of $170,000.00. She had been repaired in February, 1917. The British Government paid the owners $462,090.00, or a valuation of $80.00 per deadweight ton. "They had valuators of their own whom they called. They made us this offer and it was a question of taking it or arbitrating it," it is stated in the claim of the owners. The owners, incidentally, were one of the oldest and most experienced shipping concerns in Canada.

There is nothing on the record or in the circumstances to indicate that the Nova Scotia Steel & Coal Company, Limited, could not have bought or at all events chartered another ship at the time to replace the *Wacousta*, thereby lessening their loss, if any. As a matter of fact they or their associates did charter ships in 1915 and 1916 on time charters at 6s. and 8s. In April of the year 1915 they chartered the *Fimreite*, a tramp ship like the *Wacousta*, only a little bigger, for eight months at 15s.

I am of the opinion that $420,000.00 would fairly represent the reasonable market value of the *Wacousta* when she was lost, and that the sum of $105,000.00 would be ample compensation to claimants for their interest in the ship under their charter, with interest at 5 per cent per annum from the date of loss, November 8, 1915, to date of settlement.

They had no insurance.

SS. "Fimreite"

The basis of the claim is for loss and damage sustained by the company through being deprived of the use of the ship for the unexpired charter period. Evidence in support of the claim, as stated, was heard by the late Commissioner, who noted the claim for award at $36,517.60, arrived at by deducting $1,324.80, amount of insurance premiums the company would have had to pay for the unexpired term of the charter, from the amount claimed and dividing the balance by two. Dr. Pugsley made no finding as to the value of the ship. At the rehearing of the case before the present Commissioner this claim was abandoned.

The claim of the Nova Scotia Steel & Coal Company, Limited, in respect of the ships the *Tellus* and the *Wacousta* falls within the First Annex to Section (I), Part VIII of the Treaty of Versailles, category (9), and I find the sum of $405,000.00 fair compensation, together with interest as indicated in each case.

JAMES FRIEL,
Commissioner.

December 1, 1927.

CLASS I

The Late Commissioner Pugsley's Decisions Approved by Commissioner Friel

INSURANCE CLAIMS

Case No.	Claimant	Nature of Claim	Amount Claimed	Decision	
			$ cts.		
1466	Commercial Travellers' Association.	Claim for insurance on lives of civilians on "Lusitania."	1,000 00	Dismissed.	Indirect.
1467	Currie, Ltd., E. & S.	War risk premiums	11,707 26	"	Withdrawn.
1468	Davies Co., The Wm., Ltd.	"	838,870 73	"	"
1469	General Accident Assurance Co. of Canada.	Loss on two policies	19,000 00	"	Indirect.
1470	Harris Abattoir Co. The, Ltd.	War risk premiums	Not stated	"	"
1471	Manufacturers Life Insurance Co.	Losses on policies	912,322 00	"	"
1472	North American Life Assurance Co.	"	Not stated	"	"