

HK:cs

November 14, 1939.

MEMORANDUM TO MR. E. L. JONES

Re: Citizenship of inhabitants
of Danzig and certain parts
of Poland.

On October 29, 1939 the new statute about the political status of West Prussia and Posen was enforced. (RGFL I, p. 205) The statute itself was dated October 9, 1939 and was promulgated on October 18, 1939. (RGFL I, 204)

By section 2 of the statute the geographical boundaries of the two new "Reichsgaue" were established:

"The Reichsgau West Prussia is constituted of the counties of Danzig, Marienwerder and Bromberg.

"The Reichsgau Posen is constituted of the counties of Hebenau, Posen and Kalisch."

By section 6 it is provided:

"Inhabitants of German or similar blood, residing in these newly annexed territories become German subjects within the scope of those provisions which more specifically regulate this question.

"Members of the German race become German citizens according to the Stremburg law."

This statute for the first time excludes non-Aryans of these two territories from even becoming German subjects. What the status of these people shall be cannot be concluded from the statute. I will report again if new decrees are published on this point.

Respectfully submitted,

HEINRICH KRONSTEIN.

HK:es

September 7, 1939

File misc

PRELIMINARY MEMORANDUM TO MR. WEINER

original in Kross

Re: Isenberg Case

In connection with the matter we discussed yesterday afternoon, I refer you to the decision of the Military Court of February 8, 1917 (Entscheidungen des Reichsmilitärgerichts, Vol. 21, p. 142). There a citizen of Guatemala was naturalized and subsequently allowed to enlist in the army. Later he alleged that he could not be enlisted because his naturalization was defective on the ground that the law of Guatemala did not allow its citizens to acquire foreign citizenship without special permission of the Guatemala government.

The court rejected this contention, stating:

"It is clear that only the naturalizing state can determine under what conditions it will take foreign citizens in its own community. It can not be bound by opposing provisions of the foreign state. That is just another conclusion for the principle of the sovereignty of the state."

Respectfully,

HEINRICH KRONSTEIN.

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J.C.I.

June 26, 1939

OPINION

BY

DR. HEINRICH KRONSTEIN.

QUESTION 1. What law governed the naturalisation of persons in Bremen, Germany, in 1890-1891?

a. The federal statute about the acquisition and the loss of the federal and state citizenship from June 1, 1870 (Reichsgesetzblatt, 1870, page 855).

b. The decree of the Senate of the Free City of Bremen about the acquisition of the federal citizenship law in Bremen, of January 2, 1871 (Gesetzblatt der Freien Hansestadt Bremen, 1871, page 1).

Note: The federal constitution of 1871 gave the federal government the power to regulate the questions of citizenship. The statute of 1870 was enacted before the constitution was concluded. The statute was based upon a special agreement between the states which constituted the German Empire. The law of the Reich outlaws the law of the states, if contradictory. Insofar as provisions of a federal law are enacted, statutes and decrees of Bremen cannot be applied unless the federal statutes expressly permit that.

The Constitution of 1871 entrusted the execution of the federal statutes to the states. Therefore, you find in the decree of the Senate of Bremen only provisions regulating the execution of the federal statutes and expressly by the Empire permitted amendments.

QUESTION 2. What were the requirements of such naturalization and what was the procedure by which it was accomplished?

a. We have to distinguish § 8 from § 7 of the above-quoted federal statute: "naturalization of an alien by one of the German states" (§ 8) from "grant of citizenship" of one German state to a member of another German state.

The conditions of an act of naturalization, as they are established by the statute, are minimum conditions; that means, that no government of a German state has the power to grant naturalization unless the minimum conditions are fulfilled. The power of naturalization, however, is an arbitrary power. No government of a German state can be compelled to grant naturalization either by the applicant by any suit or by the federal government.

The minimum conditions are:

a. The applicant must be of age according to the law of his former home state; if he is not of age, his father or his guardian may give his consent to an application of the minor.

b. The previous conduct of the applicant has to be free from any badge of any act of moral turpitude.

c. The applicant must prove that he has his own apartment, or at least a permanent place of residence in the state in which he makes his application.

d. The applicant must be able to make his own living.

The conditions of a grant to a citizen of another German state are maximum conditions. This grant can only be refused if the existence of these conditions is not proved. The conditions are:

1. citizenship in another German state;
2. residence in the state in which the application is made (own apartment, or at least, place of residence);
3. ability to make his own living;
4. the applicant shall not be subject to certain restrictions in regard to the free choice of his residence.

In the Isenberg case, it seems to be assumed that only naturalization is to be considered. The use of the word "Naturalisationsurkunde" by the recorder of the Bremen Citizens' Book can, however, not be considered as of sufficient evidence, because the words "Naturalisationsurkunde" and "Aufnahmsurkunde" are used interchangeably.

Furthermore, the fact that Isenberg was naturalised by the Hawaiian government in 1874, does not prove anything in regard to his German citizenship. The statute of 1870 does not know of any provision according to which a citizen would lose his German

citizenship by the mere fact of the acquisition of another citizenship. Citizenship can only be lost by ten years' absence (§21). This period can be shortened to five years in the case of the acquisition of another citizenship, if a treaty between Germany and Hawaii had been concluded, as it was the case between Germany and the United States (§ 21, par.3).

I cannot know whether all the conditions of the loss of citizenship by Isenberg's father were fulfilled, when Isenberg was born.

1. The statute of 1870 does not introduce a peculiar kind of procedure for the preparation of the naturalisation. It was an arbitrary act of the government of the state. Therefore, there was no need for many procedural devices. § 8 provides only that the administrative body must consult the authorities of the county in which the applicant resides, if the conditions above-mentioned are really fulfilled. The act of naturalization, however, is clearly and definitely determined in § 10:

"The issuance of the certificate of citizenship establishes all rights and duties connected with citizenship."

2. The procedure of the grant of citizenship to a member of another German state must be different, as a consequence of

the different character of the institution. There is no arbitrary power of the state. If the application is rejected, the applicant can bring a suit in the administrative court.

QUESTION 5.

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a. ~~what is the significance of the oath?~~ was not required
a year later than the

The oath sworn ~~at the time of~~ the naturalisation or the grant as a condition of the effect of the naturalisation or the grant of citizenship. Its significance is entirely different. In the Free Cities of Hamburg, Bremen, and Lubeck, not every "citizen" had political rights granted by the state constitution, as for instance the right of voting; the citizen had to obtain an additional qualification, that of a "Staatsbuerger". § 2 of the Constitution of the City of Bremen of February 21, 1854 (not essentially changed by an amendment after the establishment of the German Empire) which adapted the Bremen Constitution to the German Constitution, provided: the acquisition and the loss of citizenship is regulated by the federal statutes.

"Staatsbuerger" of the state is every citizen who swears the oath of a "Staatsbuerger".

Every adult male citizen could make this oath and become a "Staatsbuerger". The Bremen oath reads as follows in German:

HK:cs

September 7, 1959

File misc

PRELIMINARY MEMORANDUM TO MR. WEINER

original in Kronstein

Re: Isenberg Case

In connection with the matter we discussed yesterday afternoon, I refer you to the decision of the Military Court of February 6, 1917 (Entscheidungen des Reichsmilitärgerichts, Vol. 21, p. 1427). There a citizen of Guatemala was naturalized and subsequently allowed to enlist in the army. Later he alleged that he could not be enlisted because his naturalization was defective on the ground that the law of Guatemala did not allow its citizens to acquire foreign citizenship without special permission of the Guatemala government.

The court rejected this contention, stating:

"It is clear that only the naturalizing state can determine under what conditions it will take foreign citizens in its own community. It can not be bound by opposing provisions of the foreign state. That is just another conclusion for the principle of the sovereignty of the state."

Respectfully,

HEINRICH KRONSTEIN.

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J.C.I.

June 26, 1939

OPINION

BY

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QUESTION 1. What law governed the naturalization of persons in Bremen, Germany, in 1890-1891?

a. The federal statute about the acquisition and the loss of the federal and state citizenship from June 1, 1870 (Reichsgesetzblatt, 1870, page 355).

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Note: The federal constitution of 1871 gave the federal government the power to regulate the questions of citizenship. The statute of 1870 was enacted before the constitution was concluded. The statute was based upon a special agreement between the states which constituted the German Empire. The law of the Reich outlaws the law of the states, if contradictory. Insofar as provisions of a federal law are enacted, statutes and decrees of Bremen cannot be applied unless the federal statutes expressly permit that.

The Constitution of 1871 entrusted the execution of the federal statutes to the states. Therefore, you find in the decree of the Senate of Bremen only provisions regulating the execution of the federal statutes and expressly by the Empire permitted amendments.

QUESTION 2. What were the requirements of such naturalization and what was the procedure by which it was accomplished?

a. We have to distinguish § 8 from § 7 of the above-quoted federal statute: "naturalization of an alien by one of the German states" (§ 8) from "grant of citizenship" of one German state to a member of another German state.

The conditions of an act of naturalization, as they are established by the statute, are minimum conditions; that means, that no government of a German state has the power to grant naturalization unless the minimum conditions are fulfilled. The power of naturalization, however, is an arbitrary power. No government of a German state can be compelled to grant naturalization either by the applicant by any suit or by the federal government.

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In the Isenberg case, it seems to be assumed that only naturalization is to be considered. The use of the word "Naturalisationsurkunde" by the recorder of the Bremen Citizens' Book can, however, not be considered as of sufficient evidence, because the words "Naturalisationsurkunde" and "Aufnahmsurkunde" are used interchangeably.

Furthermore, the fact that Isenberg was naturalized by the Hawaiian government in 1874, does not prove anything in regard to his German citizenship. The statute of 1870 does not know of any provision according to which a citizen would lose his German

citizenship by the mere fact of the acquisition of another citizenship. Citizenship can only be lost by ten years' absence (§21). This period can be shortened to five years in the case of the acquisition of another citizenship, if a treaty between Germany and Hawaii had been concluded, as it was the case between Germany and the United States (§ 21, par.3).

I cannot know whether all the conditions of the loss of citizenship by Isenberg's father were fulfilled, when Isenberg was born.

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"The issuance of the certificate of citizenship establishes all rights and duties connected with citizenship."

2. The procedure of the grant of citizenship to a member of another German state must be different, as a consequence of

the different character of the institution. There is no arbitrary power of the state. If the application is rejected, the applicant can bring a suit in the administrative court.

QUESTION 5. Is the naturalisation valid? If it is:

- a. What is the significance of the oath being a year later than the certificate?

The oath sworn by Carl Isenberg in Bremen was not required as a condition of the effect of the naturalisation or the grant of citizenship. Its significance is entirely different. In the Free Cities of Hamburg, Bremen, and Luebeck, not every "citizen" had political rights granted by the state constitution, as for instance the right of voting; the citizen had to obtain an additional qualification, that of a "Staatsbuerger". § 2 of the Constitution of the City of Bremen of February 21, 1854 (not essentially changed by an amendment after the establishment of the German Empire) which adapted the Bremen Constitution to the German Constitution, provided: the acquisition and the loss of citizenship is regulated by the federal statutes.

"Staatsbuerger" of the state is every citizen who swears the oath of a "Staatsbuerger".

Every adult male citizen could make this oath and become a "Staatsbuerger". The Bremen oath reads as follows in German:

"Ich will dem bremischen Freistaat treu und hold und der Obrigkeit und den Gesetzen gehorchen sein. Meine Pflichten als Staatsbürger will ich redlich erfüllen, und wenn ich in öffentlichen Angelegenheiten mitzuwirken habe, keine andere Rücksicht walten lassen, als das gemeine Beste."

[I swear to be a law-abiding citizen of the Free City of Bremen and to obey the authorities and the statutes of the state. I promise to do all my duties as a "Staatsbürger" and to consider no other interest than the interest of the whole society, if I should be called upon to serve in any public capacity.]

Before the Bremen statute of 1904, the duty to make this oath was imposed upon all adult male citizens. Since 1904, the citizen can decide for himself, whether or not he wishes to become a "Staatsbürger" in order to obtain any political rights, insofar as they are based upon state law (not federal law).

The above-quoted provision of § 2 of the Constitution of the Free City of Bremen explains it fully why Isenberg did not give his oath before his twenty-first birthday: he could not acquire the political rights before he became of age. The oath was the condition of the acquisition of political rights and could only be sworn by a person of age. The oath has nothing to do with federal rights or duties, as for instance, the duty to serve in the army and the right of voting by the members of the Reichstag.

- b. Does naturalization before the age of 21 presuppose that Isenberg had his father's consent to take this step?

If the act of 1890 was not a naturalization but a grant of citizenship according to the above-discussed § 7, no consent of the father was necessary. If, however, there was a naturalization, we have to consider the law of Hawaii, in order to examine whether Isenberg was "dispositionsfähig" [capable of disposing]. In § 2144 of the Civil Law of the Hawaiian Islands, it is stated that the age of twenty years is established as the so-called legal age. Isenberg was not twenty years of age when the new capacity was conferred upon him. Therefore, the father's consent was necessary in the case of naturalization. It is, however, not necessary to prove that this consent was really given, in order to prove that the naturalization became effective.

§ 10 of the federal statute about the acquisition and the loss of citizenship provides:

"The certificate of naturalization or the certificate of grant of citizenship establishes all rights and duties connected with the new citizenship at the moment of the issue of the certificate."

We know that the issue shall not be made unless the minor obtained the consent of the father. The issuance shall be made to the father or the guardian.

What, however, is the consequence if the issue is made, although there is no consent of the father, or if the issue is not made to the father or the guardian, but to the minor himself? The First Department of the Prussian "Oberverwaltungsgericht" points out:

"An alien, like a citizen of another German state, acquires the citizenship in a German state by the governmental act of the superior administrative body. This act is the issue of the certificate. * * * If the issue of the certificate is the consequence of a mistake of either legal or factual character, no governmental authority would have the power to revoke the certificate or to consider it as a void or an invalid document."

The issuance of the certificate to the minor or his guardian is the performance of the act of conferring the citizenship upon the minor.

The age of the applicant is not a condition *sine qua non*, but a condition which should be respected. The theoretical basis of the decision of the "Oberverwaltungsgericht" is that the naturalization or the grant of citizenship is not a contract between the state and the applicant, but an administrative act which becomes effective when done. An application is required by the statute, as a rule, but a naturalization or a grant of citizenship without application is valid.

"The naturalization is legally a one-sided act of administration; the application is not an absolute condition of the act but only regarded as the usual step to get this grant."
Meyer-Anschütz, Deutsches Staatsrecht, page 248, Anmerkung 9.

The naturalisation becomes effective as a matter of substantive law if the certificate is issued to the person who is to be naturalized or his father or his guardian. Therefore, it is the practice of the administrative authorities in Germany to send these certificates by registered mail and to deposit the receipt in the files. Most of the administrative authorities make a note upon the certificate, certifying at which time the certificate was issued. There is no statute which so provides, but it is the legal practice in all German states.

It seems to me of great significance to consider the procedural effect of these kinds of documents and the notes made upon the certificate about the issuance of the certificate according to the German procedural law.

§ 417 of the civil procedural act provides:

"The public documents issued by an authority, containing an official decree, ordinance, or decision, give full proof in regard to its contents."

§ 418, par. 1 and 2 of the same act provides:

"Public documents which do not contain decrees, ordinances, or decisions, and are not private papers, give full proof in regard to the facts about which they are certifying."

The proof that the facts certified to are incorrect is permitted insofar as the laws of the states do not exclude or restrict this evidence.

That means that the certificate of naturalization, upon which it is certified at which time it was issued, deserves full faith and credit, and gives an absolute evidence that Isenberg became naturalized (§ 417).

The note in the Citizens' Book of Bremen gives full evidence that the certificate of naturalization was examined by Bremen authorities (§ 418), unless the state law of Bremen permits counter-evidence.

It should be noted that the German law notes cases in which no counter-evidence is permitted; insofar as § 417 is involved, no counter-evidence can be proposed by the opponent.

Even if the German civil procedural act cannot be applied in this country in deciding cases in which German legal questions are involved, it is very important to understand the substantive significance of this procedural situation. From the point of view of conflict of law principles I am inclined to give § 417 the significance of a substantive law provision. According to the above-quoted Bremen Constitution "Bremer Bürger" can only become, who is at the same time a German, and a Bremen citizen. The protocol of the Bremen authorities gives "full evidence" (restricted by § 418) that the certificate of naturalization was examined by the Bremen authorities and approved by them. That is circumstantial evidence in regard to the fact that the certificate showed that it was issued.

The citizenship of Carl Isenberg, particularly the language of the certificate of naturalisation, was examined again, when Carl Isenberg entered the German army. § 21, par. 5, Wehrordnung of November 22, 1898, provides:

"When a subject of a foreign state should be admitted by the military authorities to the military service, he has to be released at once after the discovery of his allegiance to a foreign power from every kind of military service, and his name is to be stricken from any military register, unless he applies for naturalization, and his application is granted."

A foreigner, who was admitted to the German army by mistake, came into a peculiar position which was just opposite to all principles of military discipline. You can be convinced that the military authorities did whatever was possible to avoid this situation, and that they examined the citizenship of all the people who entered the military service.

A decision of the "Reichsmilitärgericht" of November 9, 1901, (Decisions of the Reichsmilitärgericht, Vol. 2, page 58) which deals with a foreigner admitted to the German military service, who later fled, points out:

"The defendant was a foreigner, and therefore under no legal obligation to perform any military service in the German army. Even the fact, that he entered the German army, which was permitted by mistake, did not constitute any kind of legal obligation. Therefore, the defendant

could not commit a crime which can only be committed by a person who intended to evade the performance of an existing legal obligation, to serve in the German army. Therefore, the conviction for the crime of "Fahnenflucht" (desertion) cannot be sustained."

The decision of the "Reichsmilitärgericht" of October 17, 1935 (Decisions of the Reichsmilitärgericht, Vol. 6, page 78) and the decree of the same court of June 17, 1909, (Vol. 14, page 77) are of the same opinion. The basis of all these decisions was the principle that a foreigner, who was admitted to the military service by mistake, was not a soldier at all. It is interesting to realize that now this problem is very often discussed again in the German legal periodicals, in particular in the "Zeitschrift für Wehrrecht", in connection with other problems. It is at least doubtful, if the legal position of foreigners in the new army (after 1936) is the same as it had been before.

QUESTION 4. If you are unable to explain the apparently under-age naturalization, is it possible that such a step was a prerequisite in order that a hitherto foreigner could serve in the German Army?

This question is answered in connection with question 5.

QUESTION 5. Suppose that J. G. Isenberg was born in Hawaii on September 12, 1870, of German parents who were in 1874 naturalized as citizens of the then Hawaiian Kingdom; that in 1878 he was taken to Germany by his parents; that on January 30, 1890, he was validly naturalized as a citizen of Bremen, Germany; also suppose that the Hawaiian government permitted expatriation of its subjects--would such naturalization proceeding make Isenberg a citizen of Bremen, and, derivatively, of the Empire?

My discussions of the questions 1, 2, and 3 answer this question 5 in the affirmative.

QUESTION 6. What would your answer be to the above question if the Hawaiian government was silent as to the right of its citizens to expatriate themselves?

According to the federal statute of 1870, it was not a condition of the acquisition of the citizenship, that the applicant was discharged from the citizenship of his previous home state; there were, however, some international treaties between the German Empire and other states according to which the German Empire promised to reject all applications for citizenship, unless the applicant can prove his discharge from his former citizenship. No treaty of this kind, entered between the German Empire and Hawaii, could be found.

QUESTION 7. What would your answer be if the Hawaiian government adhered to the doctrine that a subject could not expatriate himself without the consent of the sovereign?

This point would not induce me to change my answer, because the position of the Hawaiian government cannot have any influence upon the position of the German government and upon the German law.

QUESTION 8. a. Would the acceptance of a commission in the Reserves amount to appointment to an "office" which would confer naturalisation under the law of 1870?

The appointment of Carl Isenberg as an officer in the reserve which became effective in 1895, was an appointment to an office as it was covered by § 9 of the citizenship law of 1870. (Reichsgericht in Criminal Cases, Vol. 25, page 17; Decree of the Wuerttemberg Minister of Interior, published by Reger; Entscheidungen der Gerichts- und Verwaltungsbehörden, Vol. 15, page 410, et seq; Decree of the Saxonian Minister of the Interior, published by Reger, Vol. 17, page 67.) That means, that he acquired the citizenship if he did not have it before.

Isenberg was appointed as reserve officer of the First Grand-Ducal Mecklenburg Regiment of Dragoons, No. 17. We have to consider the position of this regiment in order to understand which state citizenship, the Prussian citizenship or the Mecklenburg citizenship, was acquired by the appointment as an officer in this regiment.

According to Art. 65 of the Constitution of the German Empire of 1871, every state administers its own regiments as "contingent of the unity of the German army". There was no federal army of the German Empire, but an army composed out of the contingents of the states. The states, however, were not sovereign in regard to the administration of their regiments:

"All troops of all the states stand under the highest command of the Kaiser in time of war and of peace." Art. 63, sentence 1.

Furthermore, the whole organization of the "contingent" was regulated by federal statutes.

Already before the German Empire was established, at the time of the North German Confederation in 1867, agreements between several members of this Confederation and Prussia ("military conventions") were concluded, according to which the contingents of Schwarzburg-Sondershausen, Waldeck, Lippe-Detmold, Schaumburg-Lippe, Bremen, Hamburg, and Luebeck were entirely abolished. "These states became a part of Prussia insofar as the organization of the army was involved." (Laband, IV, 180). The conscripts coming from these states could be sent by the Prussian authorities to any Prussian regiment, the state governments being powerless to file any protest.

After the establishment of the German Empire, "conventions" between Prussia and Mecklenburg-Schwerin, Baden, and Hessen were made. The contents of these agreements were quite different from the above-discussed agreements, concluded before the establishment of the German Empire. The regiments of Mecklenburg-

Schwerin, Baden, and Hessen were incorporated in the Prussian army. These regiments were named for the state to which they belonged. The helmet worn by the soldiers bears the emblems and the cockades of these states. The conscripts of these states were to be sent to these regiments. These regiments, however, are subject to the Prussian administration. The officers were appointed by the King of Prussia, and could be transferred to any Prussian regiment, and come from any Prussian regiment. They were subordinate to the Prussian administration and became Prussian citizens by the appointment, if they were not already before Prussian citizens.

The federal statute about citizenship of 1914 changed the law in this point: According to § 14, par. 2, the appointment of a reserve officer has no influence upon the citizenship anymore. Isenberg was appointed as a reserve captain in 1914. The provisions of the statute of 1914, however, are of no significance to Carl Isenberg, because he had been "reserve officer" before, and was appointed under the federal statute of 1870, which is to be applied exclusively.

It is not absolutely clear to me, what it means that Isenberg was called to the active service in 1914. I assume that it merely means that he served "actively" as reserve officer and

did what a reserve officer has to do in times of war. The fact that in 1914 Isenberg was quite an old man can be used as a very strong argument against the assumption that he really was appointed as an active officer.

b. What was the oath of a reserve officer?

The formula of the so-called "Fahneneid" is prescribed by a Prussian cabinet order of June 5, 1851. This Prussian cabinet order was in force until 1918, insofar as Prussian citizens are involved. As I pointed out before, the First Grand-Ducal Mecklenburg Regiment of Dragoons, No. 17, was a Prussian regiment. Therefore, the cabinet order of 1851 would have to be applied, if Isenberg was a Prussian citizen.

That, however, was obviously not the case, when he entered the army. The formula for the "Fahneneid" of persons who served in the Prussian army but were not Prussian citizens is regulated by the "Allerhöchste cabinet order" of December 14, 1867. It provides the formula of the

"Fahneneid für diejenigen Militärpflichtigen, welche ihrer Dienstpflicht nicht bei einem Truppenteil des Bundesstaates genügen, dem sie angehören."

(Armee- und Verordnungsblatt, 1867, page 179:)

"Ich, N.N. schwöre zu Gott dem Allmächtigen und Allwissenden einen leiblichen Eid, dass ich
[here follows the name of the "Landesfürst" (sovereign)]

meinem allergnädigsten Landesherrn, resp. dem hohen Senat der Freien Hansestadt in allen und jeden Vorfällen, zu Lande und zu Wasser, in Kriegs- und Friedenszeiten, und an welchen Orten es auch immer sei, getreu und redlich dienen, Allerhöchst dero Nutzen und Bestes befördern, Schaden und Nachteil aber abwenden und Befehlen des Bundesfeldherrn unbedingt Folge leisten, die mir verlesenen Kriegsartikel und die mir erteilten Vorschriften genau befolgen, und mich so betragen will, wie es einem rechtschaffenen, unversagten, pflicht- und ehrliebenden Soldaten eignet und gebührt. So wahr mir Gott helfe."

[I, (name) swear by God, the Almighty and the Omniscient, a holy oath that, wherever it may be, on the ocean or on land, in time of war or of peace, I will serve faithfully my most gracious Sovereign, the high Senate of the Free City of Bremen. I will promote the welfare and the interests of His Highness; I will avert danger and mischief from His Highness; I will obey the commands of the Kaiser at all events; I will observe exactly the articles of war published to me and all the orders which should be issued to me. I will act as an honest, resolute, dutiful, and honor-loving soldier. So help me God.]

When a soldier was appointed as a "reserve officer", he repeated the oath in generally the same words; the sole difference was that he substituted for the word "Kriegsartikel" the words "Kriegs- und Dienstgesetze", and that he promised to be a "rechtschaffener, unversagter, pflicht- und ehrliebender Offizier".

QUESTION 9. Are there any German statutes or opinions that Exhibits C, D, or E are to be accepted as evidence of the matters therein contained?

If you consider any question of evidence in German law, you should realize that the German civil procedural act has only one general rule of evidence:

"The judge has to decide the question of fact, whether or not a proposition of fact is more or less probable, according to his own free conviction, which has to be based upon the whole record of all hearings of witnesses and other forms of evidential procedure.

"The judge has to point out in his reasonings, which reason seems to him of decisive character.

"The judge is not bound by any rules of evidence, unless this statute provides otherwise." (§ 286.)

Above we discussed briefly the most significant exception to this rule: the full faith and credit which has to be given to public documents. The "Militärwochenblatt" is not a public document. A public document can only report about a particular decision of any public body or a particular act of the authorities. The public document either makes effective the decision of a public act, or at least, it is the official report that a particular act has occurred. The "Militärwochenblatt", however, informs the public about all the decisions which the Kaiser issued in regard to appointments of officers and to

other acts. It is a collection of the decisions and of the public acts, not a public document itself.

The "Militärwochenblatt" is the only official publication covering this kind of decisions. It is controlled by the competent secretary and the highest governmental authorities. No German court would question the correctness of this publication. The judge would accept the correctness of this publication as basis of his decision if there was any appointment or not. If a lawyer would attempt to disprove the correctness of the "Militärwochenblatt", he would meet with nothing but laughter of the court.

The publication of the so-called "Rangliste" is not of the same character. It is not a collection of all decisions of the Kaiser and of the highest military authorities, but it is a publication under the supervision of the highest authorities and is published upon the command of the Kaiser. The court would give this "Rangliste" a very high evidential force. The correctness of this list is of the highest probability which can be imagined.

QUESTION 10. Isenberg was an executor of the will of his uncle, Hermann Sielken, who died in Baden-Baden on October 8, 1917 where the will was published. Could an enemy alien act as an executor of a German will under a German court at that time?

An executor is not an officer of the state. The statutes regulating rights and duties of foreigners and enemies during the war time did not regulate this point. It is however very improbable that a citizen of an enemy country was appointed as executor by any German court.

Heinrich Kronstein.

Washington, D. C.
June 26, 1939.