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Treasury Solicitor.

(W 687/687/49).

13th January, 1940.

T. & M. 24234.

Sir,

The Treasury Solicitor has recently been asked to consider whether there is any danger of funds belonging to the British Government, which have been deposited in banks in neutral countries, being attached in proceedings brought in the neutral countries concerned.

These funds are deposited in the United States, Holland, Belgium, Switzerland, Sweden, Norway, Hungary and the Argentine; in all these countries, except some part of the deposit in the United States and the reichsmark deposit in the B.I.S. which are in the name of the Treasury, they are in the name of the Bank of England or of some other London bank; they consist of gold and foreign currency and may at times be represented by securities.

2. The danger against which it is chiefly desired to guard arises from the fact that the Bank of England and the other London banks concerned hold, or may hold, in England assets of the Reichsbank and other enemy banks or individuals. Under the Trading with the Enemy Act, 1939 payment cannot be made to the banks or individuals even/

The Under-Secretary of State,
Foreign Office,
S.W.1.

2 } even if demand is made, but the assets are held to the order of the Custodian of Enemy Property. X It is feared, however, that these banks or individuals may assign their rights to a neutral in one of the countries in which the British Government funds are deposited and an attempt may be made to attach these funds in order to satisfy the right so assigned.

The question whether any such funds are liable to attachment is, of course, a matter of law of the neutral country concerned. The Treasury Solicitor is informed that, so far as the United States is concerned, there is little risk of any proceedings being successfully taken either against the fund deposited in the name of the Treasury or against the fund deposited in the name of the Banks. He is also informed that Switzerland has recently passed a law, in the interests of the maintenance of its neutrality, abolishing the right to take proceedings in Swiss Courts based solely upon the existence of funds there. A copy of this law is enclosed. The Treasury Solicitor is, however, anxious to ascertain the precise position in the United States and in the other countries mentioned above in which funds have been deposited and he would be glad if the legal advisers to the British Embassies concerned could be asked to give their opinion on the matter. There are some deposits in Java and the opinion given on Dutch law should include the position in Java.

The questions on which the Treasury Solicitor would

welcome/

welcome advice are as follows:

*American and more particularly
New York State*

- 1. Whether, under the law of ~~the~~ neutral country ~~as it now stands~~, the assets deposited in the name of the Bank of England or other London bank would be liable to attachment at the suit of an assignee of a claim of an enemy against the Bank of England or other bank concerned and, if so, in what circumstances.
- 2. If there is danger of attachment at the suit of such an assignee while the assets remain in the name of the Bank of England or other London bank, whether this danger would be completely removed either
 - (a) by transferring them into the name of a British Government nominee, or
 - (b) by notifying the (neutral) bank concerned that the assets are held on behalf of the British Government.
- 3. If the method referred to in paragraph 2 (a) above is used, would the assets on the transfer be liable to attachment in respect of (a) claims by enemy Governments or enemy nationals against the British Government, or (b) debts incurred in respect of commercial transactions conducted by the British Government with subjects of the ^{USA} neutral country ~~concerned~~; or (c) any other kind of claim.
- 4. If a transfer into the name of a British Government nominee is advised, who should the nominee be. It is suggested that the Nominee might be the British Treasury or the British Ambassador ~~or Minister to~~ the/

~~the neutral country concerned~~, in which case the account would be a subsidiary Embassy account. In any case, however, it would be necessary for the nominee to authorise certain London banks to operate the account on the nominee's behalf. X

The Treasury are anxious to ascertain the position with regard to these assets and, so far as they can, to remove any danger of attachment as soon as possible, and the Treasury Solicitor would be glad if the matter could be treated as one of urgency.

I am, etc.,

(Sgd.) R.W.A. Speed.