

BRIEF STATEMENT

regarding

THE RETIREMENT BENEFITS OF THE AMERICAN EMPLOYEES OF THE INTERNATIONAL SETTLEMENT AT SHANGHAI, CHINA

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In 1844 Caleb Cushing signed the first treaty between China and the United States which granted to American citizens in China exemption from the operation of Chinese law and subjected them to the jurisdiction of American courts. The International Settlement at Shanghai was the outgrowth of this system, called extraterritoriality, which was created by this treaty and other treaties signed by China and several Treaty Powers. The United States, Great Britain, France and eleven other Powers were parties and adhered to the constitution of the International Settlement, known as the Land Regulations. This Settlement was an international corporate entity and protectorate which had been sponsored and protected by armed force by the United States, Great Britain and the other Treaty Powers for almost a hundred years.

The valuable assets of this wealthy international city were held by the Shanghai Municipal Council on behalf of all the residents of the city. They were not the property of the American, British or Chinese Governments who had no direct authority or control over such assets. The International Settlement was administered under the aegis of the Treaty Powers by a committee elected by the taxpayers and known as the Shanghai Municipal Council. This Council was only an honorary body. The administration of the International Settlement was carried on by more than ten thousand civil servants of all nationalities who made up the permanent staff of the Fire Brigade, the Public Works Department, the Educational Department, the Public Health Department, the Secretariat and the Legal Department of this great financial and industrial center. Most of these public servants were employed for life and could be dismissed only for misbehavior. A portion of their salaries was deducted

monthly to partly secure their retirement benefits. At the age of fifty-five, unless otherwise ordered and after a certain number of years of service, all employees were retired on pensions.

On January 11, 1943, the British and American Governments signed treaties with China, which provided, inter alia, for the rendition of the International Settlement without the necessary and essential safeguards to protect the vested interests, lawfully acquired under the old treaties, by the Settlement employees and also by business and religious organizations, although they had been warned against such action by the Commission on Extraterritoriality and the Report of Mr. Justice Feetham. Nevertheless the British and American Governments made these treaties and thereby deprived the Municipal employees of their retirement benefits which they had honestly earned.

The action of the British and American Governments in signing away the rights of the former employees of the International Settlement was not only illegal but immoral for the following reasons as more fully demonstrated in the attached memorandum, namely:

(1) The Land Regulations were a multilateral agreement which could not be modified by Great Britain and the United States alone but only by joint action of all the parties concerned.

(2) The liability of the Shanghai Municipal Council to pay the retirement benefits of the employees of the Shanghai Municipal Council was assigned to the Chinese Government without the consent or knowledge of such employees.

(3) These Treaties have deprived the former employees of the Shanghai Municipal Council of all their legal remedies except the right to request their respective Governments to enact appropriate legislation to remedy this injustice.

In 1946 the Department of State accepted the Chinese proposal of a Liquidation Commission to which was attached a certain number of Foreign

Advisers. In case of disagreement among the members of the Commission and the Foreign Advisers, the dispute was to be referred to the Embassies concerned and the Chinese Foreign Office for discussion and settlement.

The Liquidation Commission and its Foreign Advisers held many meetings but were unable to arrive at any agreement because the Chinese Government was not sincere in its efforts to honor the obligations it had assumed by the Sino-American Treaty of 1943. The whole matter was then referred to the Embassies concerned and the Chinese Foreign Office. Negotiations ceased in 1947. In the meantime the Nationalist Government has fled from the mainland of China and certainly will give no further consideration to these claims and the unrecognized People's Government has repudiated the Sino-American Treaty of 1943.

The British Government has accepted the realities of the situation and has paid the retirement benefits of the British employees along the lines of a scheme prepared by the Foreign Advisers of the Liquidation Commission.

Early in 1928 the then American Consul General at Shanghai, who was also Senior Consul, brought to bear tremendous pressure upon the undersigned to enter the employ of the Shanghai Municipal Council in order to alleviate a tense situation arising out of the rendition of the former International Mixed Court at Shanghai. The Consul General insisted that he should accept the position offered, contending that he was the only qualified foreign lawyer in Shanghai with sufficient knowledge of the Chinese language to cope with the new situation created by the rendition of the International Mixed Court. Strong arguments, such as rendering a great public service to his Government, to the Foreign Service and to the foreign community with security of tenure and retirement on a pension at the age of fifty-five, were advanced to persuade him to leave his well-established law practice and at considerable financial sacrifice to enter the employ of the Shanghai Municipal Council.

During the unsettled years between the Sino-Japanese Incident of 1932 and the Second World War in 1941, he endeavored to resign several times but each time he was urgently requested not only by the representatives of his own Government but also by those of other Governments having treaties with China providing for extraterritoriality, to remain at his post. As a result of this he was interned by the Japanese for two years and eight months, being denied repatriation, although his wife was permitted to leave, because he was suspected of being a secret agent of the United States.

After he was released by the Japanese he was employed by the Department of State to assist in the negotiation and translation of the Sino-American Commercial Treaty signed in 1946. When this work was completed he returned to the practice of law to recoup his fallen fortunes. In 1951 he was incarcerated by the Chinese Communists for about $16\frac{1}{2}$ months on false and trumped-up charges of being an American spy principally because he had worked for the Shanghai Municipal Council and the Department of State. Now at the age of 60 years, he finds himself without either retirement benefits or law practice. The experiences of the undersigned are related in four articles in the Saturday Evening Post entitled "I Returned from a Red Death Cell" and were published in the issues of January 17th, 24th and 31st and February 7th. Other American employees of the Shanghai Municipal Council have suffered similar experiences. Some were interned by the Japanese; some died from deprivations; while those remaining alive find themselves old and impoverished. Although the undersigned has no authority to represent the other American employees of the Municipal Council, he would like to see them obtain the same treatment as himself.

This matter has been, over a period of seven years, the subject of voluminous correspondence and arguments with the Department of State, which after reading the memorandum, prepared by the Honorable Cornell S. Franklin, a former Chairman of the Shanghai Municipal Council, and the undersigned, has agreed not to oppose appropriate legislation by Congress

to rectify a grave and serious injustice inflicted upon a group of patriotic and loyal American citizens.

The total amount to pay the retirement benefits of the former American employees of the Shanghai Municipal Council, including superannuations, sums necessary to fund pensions, gratuities, back pensions and pay and interest is \$396,583.12. An itemized statement of each claim is attached.

In view of the foregoing it is respectfully requested that Congress give favorable consideration to the attached draft of a Bill.

Robert T. Bryan, Jr.
Former Municipal Advocate and Legal Adviser
to the Shanghai Municipal Council

Attachments:

1. Memorandum
2. Extract from Morcher Document
3. Itemized statements of amounts due
4. Names and addresses of employees
5. Draft of proposed Bill

M E M O R A N D U M

regarding

THE RETIREMENT BENEFITS OF THE AMERICAN EMPLOYEES OF
THE INTERNATIONAL SETTLEMENT AT SHANGHAI, CHINA

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INTRODUCTION: The purpose of this memorandum is to demonstrate that the United States of America should pay the retirement benefits of the former American employees of the International Settlement at Shanghai, China, which they have lost as a result of the Sino-American Treaty of 1943. In order that the reader may thoroughly comprehend the facts involved, it is advisable to discuss at some length the following subjects: (1) Extraterritoriality; (2) The Legal Status of the International Settlement at Shanghai, China; (3) The Sino-American Treaty of 1943 and its consequences; (4) The Morcher Document and the Liquidation Commission; and (5) Correction of Injustice.

EXTRATERRITORIALITY: As the International Settlement of Shanghai was more or less an outgrowth of extraterritoriality, it is necessary, in discussing problems relating to that Settlement, first to understand the nature of extraterritoriality. The United States of America, Great Britain, France, Japan and eleven other Treaty Powers formerly had treaties with China which removed their nationals from the jurisdiction of Chinese Courts and subjected them to the judicial control of their own Consuls or national courts established in China, which applied their own national law. This system was originally created by the General Regulations of Trade signed by Great Britain and China in 1843, as a supplement to the Sino-British Treaty of Nanking signed in 1842. Thereafter fourteen other nations acquired the same rights as Great Britain by virtue of treaties entered into with China. The system of extraterritoriality was skillfully defined by Caleb Cushing in Article 21 of the Sino-American Treaty of Wanghsia of 1844. Cushing predicated his plan on the system of capitulations granting extraterritorial rights to

Christian and Mohammedan countries of the Levant where it had existed for some five centuries. 1/

Caleb Cushing in his now famous "Rationale of Extraterritoriality" said:

"The states of Christendom are bound together by treaties which confer mutual rights and prescribe reciprocal obligations. They acknowledge the authority of certain maxims and usages, received among them by common consent, and called the law of nations; but which, not being fully acknowledged and observed by the Mohammedan or Pagan states, which occupy the greater part of the globe, is, in fact, only the international law of Christendom. Above all, the states of Christendom have a common origin, a common religion, a common intellectuality; associated by which common ties, each permits to the subjects of the other, in time of peace, ample means of access to its dominions for the purpose of trade, full right to reside therein, to transmit letters by its mails, to travel in its interior at pleasure, using the highways, canals, stagecoaches, steam-boats, and railroads of the country as freely as the native inhabitants. And they hold a regular and systematic intercourse as governments, by means of diplomatic agents of each, residing in the courts of the others, respectively. All these facts impart to the states of Christendom many of the qualities of one confederated republic.

How different is the condition of things out of the limits of Christendom! From the greater part of Asia and Africa, individual Christians are utterly excluded, either by the sanguinary barbarism of the inhabitants, or by their phrenzied bigotry, or by the narrow-minded policy of their governments. To their courts, the ministers of Christian governments have no means of access except by force, and at the head of fleets and armies. As between them and us, there is no community of ideas, no common law of nations, no interchange of good offices; and it is only during the present generation that treaties, most of them imposed by force of arms or by terror, have begun to bring down the great Mohammedan and Pagan governments into a state of inchoate peaceful association with Christendom.

To none of the governments of this character, as it seemed to me, was it safe to commit the lives and liberties of citizens of the United States. In our treaties with the Barbary States, with Turkey, and with Muscat, I had the precedent of the assertion, on our part, of more or less of exclusion of the local jurisdiction, on conformity with the usage, as it is expressed in one of them, observed in regard to the subjects of other Christian states." 2/

The first treaties made between China and the "Treaty Powers" did not result in permanent friendly relations because the "Treaty Powers" felt that China had not lived up fully to its treaty obligations and a period of friction followed ending in war. The result was another group of treaties in 1858-1860 which, together

1/. H. B. Morse, the International Relations of the Chinese Empire, Volume I, page 329. American Foreign Relations 1930, pages 176-200. This book was published by the Council of Foreign Relations of which the former Secretary of State, Elihu Root, was President in 1930. It was printed in the United States of America and copyrighted in 1930 by Yale University Press. It must be distinguished from the State Department publication known as Foreign Relations. It will hereinafter be referred to as American Foreign Relations 1930.

2/. The Rationale of Extraterritoriality
Extraterritorial Cases, Volume I, pages 4 and 5.

with earlier ones, defined the status of foreigners in China. Another war arose out of the Boxer Rebellion after which China in 1902-1903 signed further treaties confirming extraterritoriality to the "Treaty Powers".

The extraterritorial system in China worked in the following manner:

- "(1) Cases between Chinese and nationals of treaty powers are determined by the tribunals of the defendant, and the law of his country is applied.
- (2) Cases between two or more nationals of the same treaty power are tried in the courts of that power and the law applied is that of the power concerned.
- (3) The Chinese police may arrest a foreigner but must promptly turn him over to his national representative for trial.
- (4) Cases between nationals of different treaty powers are determined by the authorities and laws of the states concerned, according to their agreements.
- (5) Controversies between nationals of non-treaty powers and nationals of treaty powers in which the latter are defendants, are determined by the authorities of the treaty powers. When the national of a non-treaty power is defendant, jurisdiction is in the Chinese courts.
- (6) In cases between the nationals of non-treaty powers and in cases between such nationals and Chinese, jurisdiction is in the Chinese courts." 1/

In addition to extraterritoriality, the treaties granted to the nationals of the "Treaty Powers" substantial rights, some of which were as follows: (1) unconditional most-favored-nation treatment; (2) religious freedom and the right to freely teach and propagate Christianity; (3) the right to navigate the inland and coastal waters of China; (4) the right of missionaries to lease land in perpetuity within the territory of the Chinese Empire; (5) the right to be unimpeded by new limitations in business or by monopolies or other injurious restrictions; and (6) the right of merchants to lease and hire land in places set aside for their residence in a certain number of Treaty Ports.

At the Washington Conference on the Limitation of Armaments, the Chinese pressed their objections to extraterritoriality. The nations there represented desiring to have full and correct information concerning the administration of justice by Chinese courts before making any agreements appointed a commission "to inquire into the practice of extraterritorial jurisdiction in China, and into the laws and judicial system and the methods of judicial administration of China". 2/

1/. American Foreign Relations 1930, page 177.

2/. Conference on the Limitation of Armaments, page 1644.

At that time civil war was rampant in China and the Chinese Government therefore requested that the meeting of the Commission be delayed. The Commission met in Peking in January 1926 under the Chairmanship of Silas H. Strawn, the American Commissioner, assisted by the representatives of twelve additional Powers making up the Commission: Belgium, the British Empire, China, Denmark, France, Italy, Japan, the Netherlands, Norway, Portugal, Spain and Sweden. The report was signed by the representatives of the Powers already mentioned and by the Chinese Commissioner, Wang Chung-hui, Chief Justice of the Supreme Court of China. 1/

The report emphasized the difficulties caused by the increasing disorder in China and noted the resulting decrease in the authority of the Central Government and the assumption of power by the provincial authorities. The report also mentioned that the instability of the tenure of administrative officials rendered the continuity of legislative policy difficult and then came to the crux of the problem: "One of the chief factors which militates against the normal administration of justice in China today is the interference with the departments of civil government by the military. The military interference with the civil administration extended to the judiciary, so that the independence of this branch of the government was in danger: - "irregularities in this respect", the report continued, "occur in the guise of the application of martial law which, however, is declared without regard to legal evidence on the subject". Thereafter the report found that it was well within the range of moderation to state that in China there was no effective security against arbitrary action by judicial or military officials with respect to life, liberty or property, and came to the conclusion that it was "premature to relinquish extraterritoriality at this time". 2/

The Commission then proceeded in this report to set forth the steps which were necessary in its opinion to conform the Chinese judicial system to the minimum essential standards and in part 4 made certain recommendations:-

"The Commissioners are of the opinion that, when these recommendations shall have been reasonably complied with, the several powers would be warranted in relinquishing their respective rights of extraterritoriality.

1/. American Foreign Relations 1930, pages 179-180.
2/. Report of the Commission on Extraterritoriality in China, Peking, September 16, 1926. Washington Government Printing Office.

It is understood that, upon the relinquishment of extraterritoriality, the nationals of the powers concerned will enjoy freedom of residence and trade and civil rights in all parts of China in accordance with the general practice in intercourse among nations and upon a fair and equitable basis.

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It is suggested that, prior to the reasonable compliance with all the recommendations above mentioned but after the principal items thereof have been carried out, the powers concerned, if so desired by the Chinese Government, might consider the abolition of extraterritoriality according to such progressive scheme (whether geographical, partial, or otherwise) as may be agreed upon." 1/

Pending the relinquishment of extraterritoriality the modifications to be made by the Powers "in the existing system in the practice of extraterritoriality" were to include the following points:-

"The powers concerned should administer, so far as practicable, in their extraterritorial or consular courts, such laws and regulations of China as they may deem it proper to adopt.

As a general rule mixed cases between nationals of the powers concerned as plaintiffs and persons under Chinese jurisdiction as defendants should be tried before the modern Chinese courts without the presence of a foreign assessor . . . With regard to the existing special mixed courts, their organization and procedure should, as far as the special conditions in the settlements and concessions warrant, be brought more into accord with the organization and procedure of the modern Chinese judicial system ...

The extraterritorial powers should correct certain abuses which have arisen through the extension of foreign protection to Chinese as well as to business and shipping interests the actual ownership of which is wholly or mainly Chinese . . . (And should) require compulsory periodical registration of their nationals in China . . .

Pending the abolition of extraterritoriality, the nationals of the powers concerned should be required to pay such taxes as may be prescribed in laws and regulations duly promulgated by the competent authorities of the Chinese Government and recognized by the powers concerned as applicable to their nationals." 2/

Although China had participated in the discussions regarding the relinquishment of extraterritoriality, she was not satisfied with the report, and Dr. C. T. Wang, Minister of Foreign Affairs, on April 27, 1929, sent identical notes to the United States of America, Great Britain, France, Brazil, the Netherlands, and Norway, requesting that extraterritoriality should be abolished at an early date.3/

- 1/. American Foreign Relations 1930, page 180.
- 2/. Report of the Commission on Extraterritoriality in China, Peking, September 16, 1926, Washington Government Printing Office. Recommendations, pp. 107-109; for the declaration of the Chinese Commissioner, see China Year Book 1928, pp. 447-456 - American Foreign Relations 1930, page 181.
- 3/. Chinese Social & Political Science Review, Public Documents Supplement (Peking) July 1929, XIII, 64; Current History, June 1929, pp. 538-539 - American Foreign Relations 1930, page 183.

The United States of America replied to Dr. C. T. Wang's note on August 10, 1929, and among other things, stated:-

"The safety of life and property, the development and continuance of legitimate and beneficial business depend in the last resort, in China as elsewhere, upon the certainty of protection from injury or confiscation, by a system of known law consistently interpreted and faithfully enforced by an independent judiciary. Where such protection fails, the life and liberty of the individual become subject to the constant threat of unlawful attack while his property suffers the ever-present danger of confiscation in whole or in part through arbitrary administrative action. To exchange an assured and tried system of administration of justice, under which it is acknowledged that life and property have been protected and commerce has grown and prospered, for uncertainties in the absence of an adequate body of law and of an experienced and independent judiciary would be fraught with danger in both of the foregoing respects. . . . My Government bids me add that it is therefore persuaded that the Government of China will concur in its belief, based as it is upon the facts set forth in succeeding paragraphs, that the sudden abolition of the system of protection by its extraterritorial courts in the face of conditions prevailing in China today would in effect expose the property of American citizens to danger of unlawful seizure and place in jeopardy the liberty of persons of American citizens. . . . (The American Government) fully appreciates the efforts which are being made in China to assimilate those western juridical principles to which your Government has referred in its note. But it would be lacking in sincerity and candor, as well as disregarding of its obligations towards its own nationals, if it did not frankly point out that the recommendations aforesaid (of 1926) have not been substantially carried out, and that there does not exist in China today a system of independent Chinese courts free from extraneous influence which is capable of adequately doing justice between Chinese and foreign litigants. My Government believes that not until these recommendations are fulfilled in far greater measure than is the case today will it be possible for American citizens safely to live and do business in China and for their property adequately to be protected without the intervention of the Consular Courts." 1/

The British reply was also sent on August 10, 1929, and observed that the promulgation of codes embodying western legal principles represented only a part of the task to be accomplished. Among other things the note stated:

"In order that those reforms should become a living reality it appears to His Majesty's Government to be necessary that Western legal principles should be understood and be found acceptable by the people at large no less than by their rulers and that the Courts which administer these laws should be free from interference and dictation at the hands not only of military chiefs but of groups and associations who either set up arbitrary and illegal tribunals of their own or attempt to use legal courts for the furtherance of political objects rather than for the administration of equal justice between Chinese and Chinese and between Chinese and foreigners." 2/

The contents of the replies of the Governments of France, the Netherlands and Norway were similar to the American and British notes, though none of these governments gave such a clear cut reply as did the United States, namely, that

- 1/. International Law Chiefly as Interpreted and Applied by the United States, by Charles Cheney Hyde, Volume II, pages 869-870.
- 2/. American Foreign Relations 1930, pages 184-185.

it was ready to negotiate the gradual relinquishment of extraterritorial rights. Great Britain and France mentioned the possibility of modifying the existing extraterritorial status and practice. 1/

China, however, was still unsatisfied and the State Council of the Nanking Government issued a mandate on December 29, 1929, which inter alia stated:

"For the purpose of restoring her jurisdictional sovereignty, it is hereby decided and declared that on and after (January 1, 1930) all foreign nationals in the territory of China who are now enjoying extraterritorial privileges shall abide by the laws, ordinances, and regulations duly promulgated by the central and local governments in China.

The Executive Yuan and the Judicial Yuan are hereby ordered to instruct the ministers concerned to prepare as soon as possible a plan for the execution of this mandate and to submit it to the Legislative Yuan for examination and deliberation with a view to its promulgative and enforcement." 2/

Immediately after announcing the mandate, the Chinese Minister of Foreign Affairs distributed to the various legations a manifesto which stated:-

"The year 1930 is the decisive time, and the actual process of re-establishing Chinese sovereignty by the abolition of extraterritoriality begins on January 1st.

The Chinese Government believe that there is no difference of opinion between those Powers and China regarding the principle involved; and is prepared to consider and discuss within a reasonable time any representations made with reference to the plan now under preparation in Nanking." 3/

The manifesto was widely published as constituting the end of extraterritoriality as of January 1, 1930. The interpretation, however, placed upon the manifesto by the "Treaty Powers" was that it was no more than an expression of desire by the Chinese Government to do away with extraterritoriality in name and in principle by legal process. It had not at that time issued the necessary laws or regulations to enforce abolition of extraterritoriality. The declaration of the Chinese Government aroused much interest and comment in the United States. "Regardless of the interest involved", said the New York Times of December 30, 1929, "no self-respecting nation can accept the one-sided abrogation of a treaty without admitting the principle that treaties have no sanctity and may be denounced in part or in whole whenever it is to the convenience of one of the parties to do so".

1/. American Foreign Relations 1930, page 185.
2/. American Foreign Relations 1930, page 187.
3/. American Foreign Relations 1930, page 187.

The New York World of December 31, 1929, stated:

"It is difficult to see what our own government . . . can do about it . . . We can point out . . . that China would be wiser in her own interest to end the system of extraterritoriality gradually rather than to end it in a rush . . . But beyond filing a protest against abrupt action, taken against our advice and will, there is nothing we can do." 1/

The New York Herald Tribune of December 29, 1929, was more critical of China for in an article it stated:

"With all good will for China we cannot submit to an abrupt, unilateral closing of courts whose jurisdiction is due not to Chinese law, but to an international agreement."

Washington issued no announcement but the Department of State seemed to consider the Nanking declaration as only a statement of policy and expressed the opinion that the treaty provisions then in force were the result of mutual agreement and could be altered only by mutual agreement and that the status of American in China would remain unchanged until treaties for the alteration of their status were signed. This statement was confirmed by American Consuls in China in a circular issued to United States nationals, associations, and corporations, stating that the United States of America considered that the rights of American nationals, associations, and corporations had not been altered. 2/

Between 1930 and the outbreak of the Pacific War in December 1941, a number of satisfactory codes were promulgated but, unfortunately, were never put fully into operation and the country remained torn by civil strife and virtual war with Japan. The general conditions existing in China during that period are a matter of history and have been succinctly and clearly set forth by the Department of State in its own publication, United States Relations with China. 3/ A repetition in this memorandum is unnecessary.

Finally and apparently without any further investigation as to the readiness of China for the complete relinquishment of extraterritoriality, the Treaty of 1943 between China and the United States was signed, Article I of which reads as follows:-

"All those provisions of treaties or agreements in force between the Republic of China and the United States of America which authorize the Government of the United States of America or its representatives to exercise jurisdiction over nationals of the United States of America in

1/. American Foreign Relations 1930, page 188.

2/. American Foreign Relations 1930, pages 188-189.

3/. U. S. Relations with China, pages 10-64.

the territory of the Republic of China are hereby abrogated. Nationals of the United States of America in such territory shall be subject to the jurisdiction of the Government of the Republic of China in accordance with the principles of international law and practice."

LEGAL STATUS OF THE INTERNATIONAL SETTLEMENT OF SHANGHAI: The International Settlement at Shanghai, China, was and still is a legal corporate entity with a constitution which is known as the Land Regulations. This constitution was in the form of an agreement originally between China and Great Britain in 1845, which thereafter became multilateral when on various dates, with the consent of China, such agreement was agreed upon and adhered to by the United States of America, Belgium, Brazil, Denmark, France, Italy, Japan, the Netherlands, Norway, Portugal, Spain, Sweden and Switzerland. 1/ The Land Regulations were amended in 1854, 1869, 1899 and 1926.

At a meeting of ratepayers held on April 13, 1927, Mr. Sterling Fessenden, the then Chairman of the Council, in his speech said:

"Shanghai as a municipality was not created by and does not derive its powers of government from the legislative assembly of any single state or country, nor from the mandate of any single sovereign power. It was created by and derives its powers from an agreement made between the so-called 'Foreign Powers' on the one part and the Chinese Government on the other part.

This agreement, which for the want of a better name is known as the 'Land Regulations', has all the sanctity of a treaty, being as it is a solemn and inviolable compact between sovereign nations.

In substance and effect, although not in form, it is a treaty of the highest class, being as it is not merely a bi-lateral agreement between two sovereign powers, but an agreement to which many sovereign powers are parties." 2/

The legality of the Land Regulations and By-laws as far as American nationals, associations, and corporations were concerned was tested in 1881 in an action brought before the American Consular Court by the Municipal Council against a Mr. Reid, an American citizen, to compel payment of taxes. The defendant denied that the plaintiffs were a legally constituted body possessing powers of taxation over himself and his property, and he claimed that he was amenable only to the laws enacted by the United States Congress. The plaintiffs relied for the legality of their action upon the Land Regulations of the International Settlement at Shanghai which had been submitted to the Foreign Ministers at Peking and approved by them

1/. Feetham Report, Volume I, pages 63, 166; Feetham Report, Volume II, page 218.
2/. Feetham Report, Volume II, page 118.

in 1869. The defendant, however, disputed the authority of the American Minister to make him in any way liable to the demands of the Shanghai Municipal Council at Shanghai or any other such body. The Consul General sitting as Judge gave his opinion that the approval of the Land Regulations and By-laws by the Minister and indirectly by the Department of State had placed them under the sanction of the treaties and of the acts of Congress pertaining to foreign jurisdiction and that Mr. Reid in choosing to reside within the International Settlement and to enjoy the advantages of a well administered municipality had made himself liable to pay his equitable portion of Municipal taxes. 1/ Upon the same grounds, it may be added, the legality of the Land Regulations and By-laws was upheld in 1887 on instructions from the then Secretary of State, Bayard. 2/

In 1899 the Land Regulations were amended and approved by the Consular Body at Shanghai and by the Diplomatic Body at Peking, representing the Treaty Powers of the one part and the Chinese Government of the other part. Again on October 26, 1926, the Consular Body at Shanghai received a communication from the Commissioner of Foreign Affairs, stating that the Ministry of Foreign Affairs had agreed to a further amendment to the Land Regulations with regard to Chinese being members of the Municipal Council. On being informed of this communication, the Diplomatic Body authorized the Consular Body at Shanghai to put the amendment into effect. This agreement between the Chinese Government and the Diplomatic Body constituted further and conclusive proof that the Land Regulations were valid and binding upon the fourteen Treaty Powers hereinbefore mentioned and the Chinese Government. 3/ Commencing upon page 63 of the Feetham Report, hereinafter referred to, a memorandum appears on the Land Regulations as amended in 1898 and brought into force in 1899, written by J. R. Jones, the then Deputy Secretary of the Shanghai Municipal Council. In this memorandum, Mr. Jones proves beyond the shadow of any doubt that the Land Regulations are legal and valid, and among other things, stated:-

"From the outline history given above it will be seen that the validity of the Land Regulations so far rests:

- 1/. American Foreign Relations 1882, pages 123-132, American Consular Jurisdiction in the Orient, by Hinckley, pages 170, 171.
- 2/. Wharton International Law Digest, Appendix, page 852, American Consular Jurisdiction in the Orient, by Hinckley, page 171.
- 3/. Feetham Report, Volume I, pages 128-130.

- (1) Upon being passed by the Ratepayers.
- (2) Upon being passed by the Foreign Consuls and local Chinese Authorities and upon being confirmed by the Foreign Representatives in Peking.
- (3) Upon notice of the new Regulations being given to the Tsung-li Yamen and upon the waiver of the right of the Chinese Government to give its sanction, such waiver being contained in the letter from the Taotai to the Senior Consul, on 1st September, 1898, and upon the consent of the Taotai Tsai Chun as contained in the letter of 5th September, 1898, to leave the matter to the decision of the Municipal Council and the Consular Body." 1/

In addition to this, the agreement providing for the establishment of a Chinese Court in the International Settlement at Shanghai, China, which was also a multilateral agreement signed on February 17, 1930, on the one part by representatives of Brazil, the United States of America, Great Britain, Norway, the Netherlands and France and on the other part by the Republic of China, provided in Article 2 thereof that the Land Regulations and By-laws of the International Settlement were applicable in that Court pending their adoption and promulgation by the Chinese Government. 2/

It is cogently clear from a study of the Land Regulations that China did not abandon her sovereignty over the Settlement but, on the other hand, expressly affirmed it. Such affirmation of sovereignty is clearly made in the provisions as to the issue of title deeds to land in the Settlement; 3/ and in the provision for payment to the Chinese Government of an annual rent on "all land leased by foreigners"; 4/ and further still the provision that any amendments or any additions to the Regulations or any doubts as to their construction should be consulted upon and settled by the Foreign Consuls and local Chinese authorities, subject to confirmation by the Diplomatic Body in the capital of China and the Chinese Government. 5/

The International Settlement at Shanghai maintained a Police Department, a Volunteer Corps (a militia to assist the police in preserving law and order), jails and reformatories, a Fire Brigade, a Public Works Department, an Educational

1/. Feetham Report, Volume I, page 66
For full memorandum see Feetham Report, Volume I, pages 63-67.
2/. Feetham Report, Volume I, page 196.
3/. Feetham Report, Volume I, pages 68 & 69 - Land Regulations Articles 2 & 3.
4/. Feetham Report, Volume I, pages 73 & 74 - Land Regulations Article 8.
5/. Feetham Report, Volume I, page 82 - Land Regulations Article 28.

Department, a Public Health Department, a Secretariat, and a Legal Department; 1/ it had a limited right of eminent domain; 2/ it had authority to elect a Council or Committee which committee, when appointed, had full power and authority to levy taxes and to sue for all arrears of taxes in the appropriate courts. 3/ All the rights and property belonging to the International Settlement vested absolutely in such Committee or Council and to their successors in office. 4/ The Committee or Council could sue defendants in appropriate courts and be sued in the Court of Consuls having the same rights and obligations which private defendants had in proceedings at law or suits in equity. 5/

No foreign government or any combination of foreign governments had any property rights in the assets of the International Settlement which, as already indicated, vested absolutely in the Council. Article 11 of the Land Regulations assigned to Consuls and Ministers of Foreign powers certain functions. The Consuls are sometimes referred to in the regulations as the "Foreign Treaty Consuls". There were fourteen powers exercising extraterritorial rights and the group of Consuls at Shanghai which dealt with questions arising out of the Land Regulations consisted, therefore, of Consuls-General or Consuls of these fourteen powers. 6/ These "Foreign Treaty Consuls" constituted what was known as the Consular Body at Shanghai, which met from time to time and was presided over by the Senior Consul, seniority being determined by the length of service in Shanghai. The Consul-General who had been appointed to Shanghai first, automatically became the Senior Consul. The Body had at the time of Pearl Harbor a full-time paid secretary who acted as a liaison officer between the Consular Body and the Shanghai Municipal Council.

The Treaty Powers acting through the Consular Body at Shanghai and the Diplomatic Body at the Capitol of China had the duties and functions of: (1) conducting of negotiations with the Chinese authorities with regard to questions arising between the Council and such authority; (2) approving new By-Laws and resolutions of special meetings of ratepayers; (3) establishing annually a

- 1/. Feetham Report, Volume I, page 153.
- 2/. Feetham Report, Volume I, page 69 - Land Regulations Article 4.
- 3/. Feetham Report, Volume I, page 76 - Land Regulations Article 10.
- 4/. Feetham Report, Volume I, page 76 - By-Law 11.
- 5/. Feetham Report, Volume I, page 82 - Land Regulations Article 27.
- 6/. Feetham Report, Volume II, page 218.

Court of Foreign Consuls, generally consisting of three members elected by the Consular Body; (4) performing certain important functions regarding the registration of land in the International Settlement; and last and the most important of all (5) acting as the guardians of the "Council's Right of Government". 1/

In brief, the International Settlement at Shanghai may be loosely described as an International Protectorate which had been sponsored and supported by the United States of America and the other "Treaty Powers" almost from its inception by diplomacy and even armed force. The United States of America had considered the International Settlement at Shanghai of sufficient importance to justify its participating in the Battle of Muddy Flats at Shanghai in April 1854, to station armed forces there for a short period in 1900; to send the Sixth Marines there for a tour of duty in 1927; to send the 31st Infantry there for a tour of duty in 1932; to garrison the Fourth Marines there from 1927 to 1941 and to devote to the City an entire paragraph in the Sino-American Treaty of 1943.

The assets of the International Settlement were of great and increasing value in the form of extensive areas of land, public abattoirs, jails, markets, hospitals, nursing homes, schools, wharves and jetties, stocks, stores and plants, rights and interests in the public utilities and other investments, the value of which is difficult to estimate on account of fluctuating exchange, depreciation of currencies, and increase and decline in the value of property. Suffice to state, that the value greatly exceeded the amount of all its obligations and liabilities.

2/

The assets of the Council, as already indicated, were the property of the corporate body and were held by the Shanghai Municipal Council on behalf of the residents of the Settlement, who paid their rates and taxes. They could be levied upon after judgment rendered by the Court of Consuls to pay municipal debts and the salaries, pensions, and superannuation funds of the Council's employees. They were not the Property of the British, American or Chinese Governments which had no direct authority over them.

In order to take care of its property and perform its functions, the International Settlement had a large number of foreign and Chinese employees, recruited

1/. Feetham Report, Volume II, pages 146 & 216, where all the relevant articles of the Land Regulations are cited.

2/. Balance Sheet of the International Settlement dated November 30, 1939.

for a career service, subject to good conduct and efficient work. They included a large number of professional and technical men and women of high qualifications and great experience. 1/ The International Settlement which these foreign and Chinese employees helped to administer was a part of the port of Shanghai, which is situated on a tributary of the Yangtze estuary called the Whangpoo, meaning yellow estuary. The Whangpoo is little more than a tidal channel penetrating about forty miles into the interior where it drains off waters from a complicated network of lakes and canals. A few hundred years ago this estuary barely existed and much of the countryside North and East of Shanghai is the growth of the last few hundred years. In fact, the entire Province of Kiangsu in the extreme East of which Shanghai is situated, is made up of the silt brought down from Central Asia by the Yangtze River. 2/ To the foreign trader in China, Shanghai was until the rendition of the Settlement, an islet of security in a tumultuous ocean of Chinese trouble - a place which had modern granite buildings, electric lighting, factories and warehouses, telephone service, a rule of law, personal security, traffic control, luxurious hotels, clubs of all nationalities - in short all the paraphernalia of "civilization". Prior to its rendition, it was one of the world's leading ports. Over thirty million tons of shipping a year was cleared in and out of the port. Some authorities placed it third to London and New York. The whole hinterland of the Yangtze basin contained nearly 200 million people who depended upon it for a large part of their livelihood. The Yangtze valley is the Mississippi valley of China. If the Mississippi flowed into the Atlantic with New York at its mouth, the situation would parallel the Yangtze and Shanghai. Prior to rendition of the Settlement, "the great river" brought down a wealth of trade which grew when peaceful conditions existed and decreased when internal trouble increased. From the port radiated trade routes to half a dozen treaty ports on China's coast that concentrated on Shanghai. Roughly, it may be said that it was the distributing center for a coast line of 800 miles in extent. This made Shanghai responsible for 40% of China's foreign trade and 25% of its transit trade. 3/

- 1/. Feetham Report, Volume I, page 153 and Feetham Report, Volume IV, pages 56-60.
2/. American Foreign Relations 1930, page 163.
3/. American Foreign Relations 1930, pages 165 & 166.

The National Government derived almost half of its entire Customs revenue and a large proportion of the other revenue shown in its published budget from taxes levied on the trade which passed through Shanghai, or on the industries centered there, and raised from the Chinese business community in Shanghai probably by far the greater part of its domestic loans. The National Government was crippled financially by the changes in Shanghai which caused these important sources of revenue and loan funds to dry up and substantially reduced the large contributions which the Government formerly received from Shanghai. 1/ There were centered in Shanghai vast vested interests of the nationals, associations, and corporations of many nationalities. 2/ The business and foreign community and many of the Chinese community in Shanghai believed that if the Settlement area were returned to China's control there would be "widespread alarm, the foundations of credit would be generally shaken, commerce would be paralyzed and serious financial disaster would ensue". 3/

However, as some Chinese were urging the rendition of the Settlement, Mr. H. E. Arnhold, the Chairman of the Shanghai Municipal Council on November 29, 1929, sent a cable to General the Honorable J. B. M. Hertzog, Prime Minister of the Union of South Africa, informing him that the Municipal Council "faced by the acute problem of reform in the Settlement . . . urgently needed the immediate aid of an adviser free from previous commitments or bias, who combined judicial with municipal and political experience". 4/ He then requested the South African Government to place at the disposal of the Council the services of the Honorable Mr. Justice Feetham, C.M.G. The message concluded as follows:

"Your Government, as the most detached from Far Eastern controversies, is exceptionally situated to render this aid in unravelling the knot at the centre of China's tangled relations with Foreign Powers. The Council by unanimous vote, including American, British, Chinese and Japanese members, respectfully invites your immediate aid." 5/

General Hertzog replied to the Council's cable on December 2, in which he agreed to the request made by the Council and stated that arrangements would be made for the early departure of Mr. Justice Feetham to Shanghai.

- 1/. Feetham Report, Volume II, pages 105, 106.
- 2/. Feetham Report, Volume II, page 106.
- 3/. Feetham Report, Volume II, page 115.
- 4/. Feetham Report, Volume I, page 1.
- 5/. Feetham Report, Volume I, page 1.

On December 6, the Council issued a press release on the subject of Mr. Justice Feetham's impending visit to Shanghai, explaining the council's action in issuing the invitation. The press release, among other things, stated:-

"Ever since the publicly announced policy of the Foreign Powers, and particularly America and Great Britain, with regard to the gradual relinquishment of extraterritorial privileges in China, the Council has fully appreciated the important relation of this policy to the complicated problem of the future status of the International Settlement during the transition period which must necessarily ensue before such a policy can become fully effective, as well as the necessity of devising some constructive plan or scheme which, while giving full consideration to the aspirations of the Chinese people, will at the same time afford reasonably adequate protection during this transition period to the great foreign, commercial and business interests which have been developed in Shanghai.

It has been unofficially intimated to the Council by persons intimately connected with government circles that the Council might well take the lead in formulating some such constructive plan or scheme, and that in order to obviate, in so far as possible, any impression or suggestion of prejudice or bias with which any plan of merely local origin might possibly be regarded in official and unofficial circles, it is desirable that in formulating such a plan the Council should have entirely disinterested and open-minded advice of a high order.

This idea strongly appealed to the Council and after careful consideration it decided by a unanimous vote, including the Chinese members, to seek the services of an expert of international reputation thoroughly to explore the subject and develop its practical possibilities." 1/

Upon arrival of Mr. Justice Feetham in Shanghai, he wrote a letter to the Council, dated January 15, 1930, in which he stated, among other things, the following:

"I should like to make an earnest appeal to leading members of different communities in the International Settlement for their frank and cordial cooperation in helping, by the contributions which they alone can make, to provide me with material on which to base my conclusions on the difficult problems which the Council has called upon me to study, and which are of vital interest to all communities alike. An outsider confronted with such problems is peculiarly dependent on such cooperation.

Further I would add this. The Council, as the authority representing the International Settlement, has called on me for advice upon matters fundamentally affecting the future of that Settlement; and special stress has been laid in their invitation on the desire of the Council to obtain such advice from someone who approaches the whole question from an independent standpoint without previous commitment or bias. In order that my status as an independent enquirer may be fully recognized, I should be glad if it could be understood from the first that the report which I am to prepare for the Council is to be a report not only for the information of the Council itself but also for the information of the general public.

May I say in conclusion how much I appreciate the confidence which the Council has been good enough to show in me by its invitation? The object of this letter is really to make plain what I understand to be implied in

that invitation, and to ensure that I shall be in a position to discharge to the best of my ability the responsible task which the Council has asked me to undertake." 1/

In reply to this letter, Municipal Notification No. 3925, dated January 22, 1930, was issued and reads as follows:

"Attention is called to the letter addressed by the Hon. Mr. Justice Feetham to the Chairman of the Council and published in this issue of the Municipal Gazette. In accordance with the suggestion therein contained, the Council gladly extends an invitation to all public bodies, associations and individuals of all nationalities to communicate to the Hon. Mr. Justice Feetham at Room 341, Administration Building, any information or expression of opinion that may bear upon the subject of his enquiry.

When personal interviews are desired, parties should first communicate by letter addressed to Mr. Justice Feetham's Private Secretary." 2/

In his report which he ultimately made in 1931, Mr. Justice Feetham outlined the scope of his inquiry and stated that his task was "not only to study the actual conditions, economic, social, administrative and political in the Settlement itself and the areas of Shanghai contiguous to the Settlement, but also to form some general idea of the conditions prevailing in the environment to which Shanghai belongs - that is, of the background, economic, political and administrative, in the country at large, against which the special problems of Shanghai have to be viewed before they are revealed in their true shape and proportions".3/

After his introductory remarks 4/, Mr. Justice Feetham proceeded to outline the history of the Settlement from 1845 to the date of his report in 1931. He wrote at length upon the history of the Land Regulations subsequent to 1854 and discussed the constitution of the International Settlement as embodied in the Land Regulations then in force. 5/ He continued in the first volume of his Report and discussed Chinese representation, the position of the Chinese under the Settlement administration; the scope and organization of the Settlement administration; the courts of law in the Settlement; freedom of speech, publicity and press; systems of government in adjoining areas; Shanghai as a commercial and industrial port and center; Shanghai's position as a banking and financial center; land tenure and land values in the Settlement and the fundamentals of security.6/ In brief, the first volume of Mr. Justice Feetham's Report is the finest statement

- 1/. Feetham Report, Volume I, page 3.
- 2/. Feetham Report, Volume I, page 4.
- 3/. Feetham Report, Volume I, page 5.
- 4/. Feetham Report, Volume I, pages 1-13.
- 5/. Feetham Report, Volume I, Chapters 3 & 4, pages 54-84.
- 6/. Feetham Report, Volume I, See Table of Contents.

of the historical background and legal status of the International Settlement at Shanghai which has ever been written.

In Volumes II, III and IV he continued to discuss the history and background of the International Settlement and to make his findings and recommendations. A summary of his conclusions reads as follows:

"The conclusions to which I have come on the broad issue of rendition may now be briefly stated as follows:-

I. The objections to rendition as a practical policy for immediate adoption are overwhelming. Rendition today would not only be fatal to the 'security' which, from the point of view of business interests, is the vital feature of the present Settlement regime, but would also render impossible the continuance of local self-government in any effective form. Rendition will, however, ultimately be justifiable and necessary in order to satisfy the national aspirations of the Chinese people, and to enable the National Government of China, by the exercise of its own authority, to provide for the future municipal government of the Settlement. Rendition, followed by the grant by the Chinese Government of a Charter conferring rights of local self-government on the inhabitants of the Settlement - foreign and Chinese - whether as a separate self-governing unit or as part of a larger whole - should, therefore, be recognized as the ultimate goal of future policy.

II. Rendition should not take effect until the following conditions have been fulfilled:-

- (1) The internal conditions of China, as regards establishment of the authority of the National Government and maintenance of order, must have so far improved as to remove any reasonable anxiety as to the future defence of the Settlement against civil war, or other external dangers which may arise from local disturbances.
- (2) The idea of the rule of law must take root in China, and be embodied in a practical and effective form in the institutions of the country; and constitutional government must reach such a stage of development as to enable the National Government to make by Charter adequate and durable provision for the future administration of the Settlement on a self-governing basis, and to secure the inviolability of the rights granted under such a Charter under a judicial system which both guarantees the independence of the Courts and enables them to enforce their decisions.
- (3) Political conditions in China must be such as to enable local self-governing institutions to enjoy real independence within their own sphere of operations without being subject to the orders of the National Government, or to the control of any Party organization occupying a privileged and dominating position, such as that at present assigned to the Kuomintang.
- (4) The Chinese community in the Settlement must acquire sufficient experience in the working of representative institutions to enable them to assume the major share of responsibility for the administration of the Settlement with a reasonable prospect of success.

III. It is inevitable that a long transition period should still intervene before these conditions can be adequately fulfilled. Their fulfillment will involve a great process of transformation. China's leaders have set themselves to accomplish such a transformation. But time is needed not only for making the fundamental changes required for the purpose of fulfilling these conditions, but also for testing the effective and lasting character of such changes, and to suggest that this double process can be completed in the course of a few years is only to raise anticipations which are doomed to disappointment. During this transition period the present Settlement regime, as established under the Land Regulations, should be maintained on the basis of increasing cooperation between the Foreign and Chinese communities, and such constitutional changes should be introduced as are

necessary for the purpose of enabling the Chinese to participate effectively in the work of local self-government under some modification of the present system, and of thus paving the way to the eventful establishment of a new system based on a charter granted by the National Government. 1/

SINO-AMERICAN TREATY OF 1943 AND ITS CONSEQUENCES: Article 3 of the Sino-American Treaty of 1943 reads as follows:

"The Government of the United States of America considers that the International Settlements at Shanghai and Amoy should revert to the administration and control of the Government of the Republic of China and agrees that the rights accorded to the Government of the United States of America in relation to those Settlements shall cease.

The Government of the United States of America will cooperate with the Government of the Republic of China for the reaching of any necessary agreements with other governments concerned for the transfer to the Government of the Republic of China of the administration and control of the International Settlements at Shanghai and Amoy, including the official assets and the official obligations of those Settlements, it being mutually understood that the Government of the Republic of China in taking over administration and control of those Settlements will make provision for the assumption and discharge of the official obligations and liabilities of those Settlements and for the recognition and protection of all legitimate rights therein."

It is a well recognized rule that treaties are subject to the same rules of interpretation as other documents, and that International law applies. It is fundamental and axiomatic, according to both International and domestic (as distinguished from International) law that a multilateral agreement or treaty cannot be modified except by agreement of all the parties signatory thereto or, in accordance with the procedure laid down for modification in the treaty or agreement itself. 2/

We have already seen under the heading "The Legal Status of the International Settlement at Shanghai" that the constitution of the Settlement, the amended Land Regulations, was in the form of a multilateral agreement which was agreed upon and adhered to by China, the United States, and thirteen other Powers. Before the United States of America could withdraw from this agreement, it was necessary that the matter be consulted upon and settled by the foreign Consuls, subject to confirmation by the Foreign Representatives and Supreme Chinese Government, as provided in Land Regulation 28. The United States of America had no property rights in the International Settlement that could cease, but only the right to perform certain duties, acting through the medium of the Consular Body at Shanghai and the Diplomatic Body at the capital of China.

1/. Feetham Report, Volume II, pages 139 and 140.

2/. Volume V, Digest of International Law by Hackworth, page 337;
Volume 13, Corpus Juris, pages 601 and 602. *Buster v. Fletcher*, 22 Ida. 172, 125 P. 226.

As already indicated one of the most important of these duties was the right to act as one of the "Guardians of the Council's Right of Government". This right and duty had been exercised by the United States of America, in conjunction with the other Treaty Powers, and with the full and complete knowledge and consent of the Chinese Government, for almost one hundred years and could not cease by the bilateral action of the United States and China. This construction is confirmed by the second paragraph of Article 3 of the Treaty which provides, inter alia, that the Government of the United States of America will cooperate with the Government of the Republic of China for the reaching of any necessary agreements with other governments concerned for the transfer to the Government of the Republic of China of the administration and control of the International Settlement at Shanghai, including the official assets and official obligations of the International Settlement, it being mutually understood that the Government of the Republic of China in taking over the administration and control of the International Settlement at Shanghai would make provision for the assumption and discharge of the official obligations and liabilities of that Settlement, and recognize and protect all legitimate rights therein. If the rights of the Government of the United States of America could cease without the consent of the other Treaty Powers concerned, why was it necessary to provide for cooperation between the United States and the Government of the Republic of China for the reaching of any other necessary agreements with the other governments concerned? Paragraph 2 of Article 3 makes it cogently clear that at the time the treaty was signed, both the Government of the United States of America and the Government of the Republic of China were fully aware of Article 28 of the Land Regulations, and that it was the intention of Article 3, paragraph 2, that the Treaty Powers would not hand over the International Settlement to the Government of the Republic of China until such time as Article 28 of the Land Regulations had been complied with.

The United Kingdom of Great Britain and Northern Ireland made a treaty with China on January 11, 1943, which contained an article almost identical to Article 3 of the Sino-American Treaty of 1943.

In 1946 after V-J Day, Switzerland, France and Denmark exchanged notes with China agreeing to the relinquishment of extraterritoriality. Portugal and China exchanged similar notes on April 1, 1947.

No attempt was ever made to follow the correct procedure laid down in Land Regulation 28 and to call a meeting of the Consular Body to discuss the rendition of the International Settlement, nor was the matter ever referred to the Diplomatic Body at the Capital, or the Supreme Chinese Government. The Government of the Republic of China and the United States apparently considered that Article 3 of the Sino-American Treaty of 1943 transferred the administration and assets of the International Settlement at Shanghai to the Government of the Republic of China for, at the end of the War, the Republic of China with the full knowledge and consent of the Government of the United States of America took over the control and administration of the International Settlement at Shanghai without making the necessary agreements with the other governments concerned. Not only did the Government of the United States of America have full and complete knowledge of what the Government of the Republic of China was doing at Shanghai but, in addition, supplied the Chinese army with air transportation from the interior to Shanghai, so that such army could take over the International settlement expeditiously. Not only did the Government of the Republic of China take over the International Settlement at Shanghai, but it also attempted to take over the Shanghai Power Company and the Shanghai Telephone Company, whose franchises constituted one of the legitimate rights protected by Article 3 of the Treaty. The officials of the Government of China only vacated the premises of these two public utility companies after strong protests were made by the United States Embassy at Chungking. As we have seen, the International Settlement at Shanghai, China, was a corporate body and its assets belonged not to any one government but to the Shanghai Municipal Council, in accordance with the provisions of Article 11 of the Land Regulations. The Government of the Republic of China had no more right to take over the International Settlement without going through the proper procedure than it had to take over the Shanghai Power Company and the Shanghai Telephone Company. Had the proper procedure for the abrogation of the Land Regulations of the International Settlement been followed, undoubtedly the vested rights of the employees of the Council would have been adequately safeguarded.

In ordinary commercial circles it is not usual or legal for liabilities to be assigned to a new debtor without the consent of the owner of the property or of the creditor. This rule is clearly set forth in Volume 5, Corpus Juris, pages 879 and 880, where many authorities are cited:

"It is also a general rule that a party to a contract may not, unless authorized by the other party, either in the contract itself, or otherwise, to assign the contract as to escape liability for the performance of acts or duties imposed upon him by its terms. The common statement, therefore, that certain contracts are assignable is to be understood in the sense that the party is not required to perform the contract in person, but may delegate its performance to another, the assignor, however, remaining liable to the other party for the proper performance by his assignee. Furthermore, whenever it may be inferred from the nature of the contract or from its terms that performance by a party in person is intended, it may not be assigned by him so as to require the other party to accept performance by the assignee. Contracts not assignable under this rule include contracts involving relations of personal confidence, and contracts calling for personal services."

This principle is not only the law in the United States of America but also the law of the Republic of China for Article 301 of the Chinese Civil Code, when translated into English, reads as follows:

"When a third person agrees with a debtor to assume the obligations of such debtor, the transfer is not effected as regards the creditor unless such creditor has agreed to it."

The effect of Article 3, Paragraph 2 of the Treaty, as it has been construed by the United States of America and the Government of the Republic of China, was that all of the official assets and obligations of the International Settlement and the duty to discharge such official obligations and liabilities was assigned and transferred to the Republic of China, and implementation of the Treaty by making agreements with the other governments concerned was unnecessary. The consent of the Municipal Council, the owner of the assets, and the American employees who had contracts with the Shanghai Municipal Council was not obtained. Even if Article 28 of the Land Regulations had been complied with, the consent of the Shanghai Municipal Council to the transfer of the assets, and the consent of the municipal employees to the transfer of the contracts would have had to be obtained before the transaction became legal.

It is a rule of law that anyone who impedes or obstructs another's remedy for the enforcement of a fixed or certain right against a third party will be held responsible for the injury thus occasioned. ^{1/} The effect of Article 3 of the Sino-American Treaty of 1943 as it has been construed, has deprived the former Municipal employees of all legal remedies which they had against the Shanghai Municipal Council. Such employees all had Letters of Appointment or contracts which were enforceable, if violated, by legal action in the Court of Consuls. The taking over of the International Settlement by the Government of the Republic

^{1/} Volume 62, Corpus Juris, pages 1148, 1149.

of China has deprived the former Municipal employees of their right to institute legal action against the Shanghai Municipal Council in the Court of Consuls for there is no longer such a court.

THE MORCHER DOCUMENT AND THE LIQUIDATION COMMISSION: The Morcher Document was prepared by J.W. Morcher, the last Treasurer of the International Settlement at Shanghai, under a directive issued by what was left of the Municipal Council at Shanghai, China, after V-J Day. A copy of the Morcher Document as it applies to the former American Employees of the International Settlement at Shanghai is attached and marked Appendix I. This plan determined the amounts due to all employees of the former International Settlement. The calculations, in accordance with the Plan, were made by a staff consisting of former Settlement employees working under the direction and supervision of Mr. Morcher and covered the claims of all employees of the Shanghai Municipal Council regardless of nationality and, because it was prepared under the supervision of Mr. Morcher, was designated as the Morcher Document. The Morcher Document was based upon the termination of services of the Council employees as of September 30, 1945, and included pay during internment, less advances, long leave pay, pensions to those entitled to them by virtue of length of service or special dispensation and gratuities for loss of career to those not entitled to pensions. In addition to this, the Morcher Document also showed the pension amounts due to Council employees who had retired before Pearl Harbor and had been receiving their pension payments quarterly up to that day. This Document was approved by the Council at Shanghai and upon its approval became a liability of the International Settlement at Shanghai within the purview of Article 3 of the Sino-American Treaty of 1943. Article 3 of the Sino-American Treaty of 1943 did not abrogate the Land Regulations. On the other hand, in effect, it validated them, because the constitution of the International Settlement at Shanghai, China, was one of the legitimate rights in the International Settlement protected by such Treaty. It was just as much a legitimate right as the franchises of the Shanghai Power Company and the Shanghai Telephone Company to which the United States Government gave diplomatic protection when the Chinese attempted to take them over. Any action of the Municipal Council, therefore, even after the signing of the Treaty, which, as we have seen, did not transfer the assets and administration of the International Settlement to the Chinese Government, is legal and binding.

The Department of State did not support a plan put forward by the British Government which consisted of the appointment of an International Commission composed of representatives of all interested Powers. It was proposed that such commission should be authorized to hear all claims against the former International Settlement and to decide, in a judicial manner, whether they should be paid by the Chinese Government. If after the rendering of awards against the Chinese Government such awards were not paid, the assets of the former International Settlement were to be levied upon and sold to pay the awards. The appointment of such a commission had many precedents because international claims have in the past been submitted to international commissions or tribunals for settlement. In ordinary commercial circles it is not usual to permit the debtor to act as a court in determining its own responsibilities. Instead of supporting this British plan which would have assured the payment of the retirement benefits, the Department of State accepted the Chinese proposal of a Liquidation Commission appointed by the Governments concerned, consisting of eight Chinese and four Foreign Advisers which Commission was organized in the latter part of 1946 and held its first meeting on November 29, 1946. The Foreign Advisers were as follows: British - T.S. Powell, a member of the Shanghai Municipal Council; American - Dr. George Sellett, former District Attorney of the United States Court for China and a celebrated lawyer practising in China; Netherlands - Jan Carriere, a member of the Shanghai Municipal Council, and Swiss - R. von der Crone, a member of the Shanghai Municipal Council.

While these foreigners were referred to as Advisers under the rules governing the Liquidation Commission, each Chinese member and Foreign Adviser had one vote and resolutions could be adopted only by unanimous vote. All resolutions which were ordinarily passed were forwarded to the Chinese Government and the Embassies concerned for their information and appropriate action. If the Chinese members of the Commission and the Advisers failed to agree, the disagreement was referred to the Embassies concerned and the Chinese Foreign Office for settlement by diplomatic negotiation.

The Advisers to the Liquidation Commission and the Chinese members failed to reach accord upon the Morcher Document. The Advisers advocated its adoption and the paying of the foreign employees, in accordance with its terms, while the view of the Chinese members was very far from that of the Foreign Advisers. The whole matter was then referred to the Embassies concerned by the Foreign Advisers,

and to the Chinese Foreign Office by the Chinese members. On May 18, 1947, Dr. Sellett addressed a letter to the Honorable Monnett B. Davis, the then American Consul General at Shanghai, in which letter were enclosed two copies of a joint report signed by the Foreign Advisers, with a request that one copy be filed with the Consulate General at Shanghai and the original transmitted to the American Embassy at Nanking. It is understood that the American Embassy at Nanking had a copy of this joint report in its files prior to the fall of Nanking, and that a copy was forwarded to the Department of State at Washington. Thereafter the British and American diplomatic representatives in Nanking commenced negotiations with the Foreign Office regarding the claims of the former Municipal employees of the International Settlement, which continued without result until the present authorities took over Nanking.

The British Government has accepted its responsibility and has paid the former British employees of the International Settlement at Shanghai substantially in accordance with the Morcher Plan, and also substantially in accordance with a memorandum dated June 25, 1947, prepared by the Foreign Advisers setting forth the minimum considered due to the staff. The offer made by the British Government to the former British employees of the International Settlement at Shanghai reads as follows:-

"Under the terms of the Sino-British Treaty of 1943 it was understood that the Government of the Republic of China, in taking over the administration and control of the International Settlements at Shanghai and Amoy, would make provision for the assumption and discharge of the official obligations and liabilities of those Settlements and for the recognition and protection of all legitimate rights therein.

2. No payments have been made by the Chinese Government in respect of sums due to British ex-employees of the Shanghai Municipal Council. In order to relieve hardship, His Majesty's Government in the United Kingdom agree to make to ex-employees, who derive British nationality from the United Kingdom, or, in the event of their decease, their personal representatives (heirs or successors), the following final ex gratia payments.

- (1) A lump sum advance representing the full amount recommended by the Foreign Advisers to the Shanghai Liquidation Commission in respect of superannuation fund benefits up to 30th September 1945, less advances in respect of superannuation fund benefits already made by His Majesty's Government;
- (ii) A lump sum advance representing the full amount recommended by the Foreign Advisers to the Shanghai Liquidation Commission in respect of gratuity for loss of employment;
- (iii) A lump sum advance representing 50 per cent of the amount recommended by the Foreign Advisers to the Shanghai Liquidation Commission in respect of arrears of pay up to 30th September, 1945, less advances (if any) already made by His Majesty's Consular Officers in China subsequent to that date, except where such

advances were due to circumstances outside the control of the recipient, and less payments (if any) made by the Shanghai Municipal Council on or after 8th December 1941, at the rate of exchange approved by the Foreign Advisers to the Shanghai Liquidation Commission;

- (iv) Quarterly advances representing the full amounts to which ex-employees of the Shanghai Municipal Council, or in the event of their decease, their personal representatives (heirs or successors), are entitled in respect of pensions
 - (a) which were awarded prior 8th December, 1941,
 - (b) to which ex-employees were held to be entitled by the Foreign Advisers to the Shanghai Liquidation Commission in respect of the period from 8th December, 1941 to 30th September 1945: or alternatively, a lump sum advance in commutation of pension in cases where quarterly payment is so small that it can be of little current value to the recipient;
- (v) Additional advances, during the first year of operation of this settlement, to recipients of advances in respect of pensions, in order to adjust, where appropriate, the difference between the previous upper limit of £40 per month and the full amount of the pension.
- (vi) Although no income tax is payable by pensioners of the former Municipal Council in respect of advances by His Majesty's Government against pension rights, income tax will have to be paid in respect of current and past advances in respect of pension if the Chinese Government at any time in the future meet their obligations in regard to pensions for ex-employees of the Shanghai Municipal Council.

3. In consideration of His Majesty's Government making the foregoing payments, ex-employees of the Shanghai Municipal Council, or in the event of their decease, their personal representatives (heirs or successors), agree that they will assign irrevocably to His Majesty's Government a sum equal to the amount of the total advanced to them by His Majesty's Government from any money which they may have received or may in future receive from, or which in the event of their death may be paid to their personal representatives by the Shanghai Municipal Council or any other source in respect of the service benefits, referred to in paragraph 2.

4. Ex-employees of the Shanghai Municipal Council, or, in the event of their decease, their personal representatives (heirs or successors), further agree to make no further claim against His Majesty's Government in respect of such benefits and they acknowledge that His Majesty's Government have their consent to pursue with the Government of the Republic of China, in any matter which His Majesty's Government may think fit, their claims in respect of superannuation fund, pay, pension and gratuities for loss of employment, mentioned above.

5. In cases where a deceased ex-employee derived British nationality from the United Kingdom, advances will be paid to his or her personal representative. Any advances so paid can be credited only to a bank account in the United Kingdom, and any transfers from that account will be subject to the current Exchange Control regulations."

It is a fact which can be substantiated by legal proof, if desired, that all of the former British employees of the International Settlement have accepted the offer of the British Government and received the payments, as promised, including pensions, which are now being paid to them quarterly by the British Government.

It appears that the British Government does not have any superfluous funds and that in its present financial position it would not pay the claims of its nationals unless it was satisfied that it should rectify a grave injustice. The United States Government, however, is not in the same position with regard to finances as the British Government. As is well known, the United States Government has loaned the British Government large sums of money and it is within the realm of possibility that the former British employees of the International Settlement at Shanghai, China, have been paid out of the funds advanced to the British Government by the Government of the United States of America. It is believed that there is no reason for the United States Government refusing to recognize its obligation to pay the former American employees of the International Settlement at Shanghai without further delay, in accordance with the Morcher plan.

As to the Pound Sterling amounts due to the American employees, of which the Department of State is well informed, it appears that it would only be fair that these amounts should be paid in United States Dollars at the official cross rate between Pounds Sterling and the U. S. Dollar which was in force on September 30, 1945, when these amounts became due, otherwise the former American employees would lose considerable money on account of the change in the cross rate between the U. S. Dollar and the Pound. In addition to this, the United States Government, as in all transactions between private parties, should pay a reasonable rate of interest, say 6% per annum, on the amounts due as from September 30, 1945.

CORRECTION OF INJUSTICE: In view of the foregoing, it would appear to be just and equitable for the Department of State (1) to sponsor an act of Congress providing for the payment of these claims, or (2) to pay the claims out of some fund already available. The United States of America can, as the British Government did, require the former American employees of the International Settlement to assign their claims to the Government of the United States. The Government of the United States can then, if it so desires, institute legal proceedings against the Government of China in the Court of

International Justice. The former American employees of the International Settlement at Shanghai, China, submit the foregoing facts and arguments demonstrating that the Government of the United States of America should pay to them their retirement benefits.

SHANGHAI, China
December 1, 1950

(signed) Cornell S. Franklin,
Member of Shanghai Municipal Council, 1933-1940
Chairman of Shanghai Municipal Council, 1933-1940

(Signed) Robert T. Bryan, Jr.,
Former Municipal Advocate & Legal Adviser to
Shanghai Municipal Council.

Encl.

A P P E N D I X I **

EXTRACT FROM SCHEDULE OF S.M.C. RETIREMENT BENEFITS
COMPILED UNDER THE TERMS OF THE WORKER DOCUMENT
IN RESPECT OF AMERICAN NATIONALS

	Superannuation	Superannuation	Pay	Leave	Leave	Gratuity	Gratuity	Less	Total	Total	Pension v	Pension
	£	U.S.\$.	£	Pay	Pay	£	U.S.\$.	Advance	£	U.S.\$.	£	U.S.\$.
W. C. Blabon		443.77	208.11. 3.			156.10. 3.		44.11. 3.	320.10. 3.	443.77		
R. T. Bryan, Jr.	2,968.12.10.	17,925.69	6,989. 9. 2.		4,375.00			272.10.10.	9,685.11. 2.	22,300.69		2,433.00
H. M. Ely (died Mar. 1944)		505.48	255.18. 9.		621.60		619.50	49.17. 2.	206. 1. 7.	1,746.58		
C. B. Holt	1,101.11. 4.	4,795.96	463.17. 6.		1,174.85			245. 0. 8.	1,320. 8. 2.	5,970.81	80. 6.11.	111.24
R. M. Jordan	1,638.12. 4.	6,445.49	488.17. 5.		1,785.83			65.14. 6.	2,061.15. 3.	8,231.32	159.14. 0.	193.61
J. W. Lawler		736.94	780. 6. 5.		552.53	145.16. 5.		45. 7. 5.	880.15. 5.	1,289.47		
R. E. Libby		353.05	424.16. 0.		573.94	84. 3. 0.		39.14. 1.	469. 4.11.	926.99		
T. O'Dwyer	203.11. 9.	1,992.16	645. 4. 0.		1,034.01	266.16. 5.		65. 0. 8.	1,050.11. 6.	3,026.17		
P. M. Pavchinsky (died 28/2/43)	434. 6. 9.	2,580.51	200. 0. 6.		1,036.57	374. 6. 0.		321.19. 4.	686.13.11.	3,617.08		
A. N. Rosanoff (Abroad)	777. 8.10.					293.11.10.			1,071. 0. 8.			
J. J. Surel		2,375.66	869.12.10.		1,122.19	287. 1. 7.		26.12. 2.	1,130. 2. 3.	3,497.85		
R. J. Thoenes	130.13. 5.	1,372.64	298.15. 5.			217. 1. 8.		179. 8.11.	467. 1. 7.	1,372.64		
G. B. Warmoth, Miss	634.18.10.	3,882.38	529. 3. 0.			584.17. 0.		16. 5. 5.	1,732.13. 5.	3,882.38		
No Exchange Adjustment		C.N.C.\$					C.N.C.\$			C.N.C.\$		
J. H. Dunning		1,485.31	461.12. 0.				1,458.00	.17. 4.	460.14. 8.	2,943.31		
	£ 7,889.16. 1.	43,409.73	12,616. 4. 3.		12,276.52	2,410. 4. 2.	619.50	1,372.19.9.	21,543. 4. 9.	56,305.75	240. 0.11.	2,737.85
							1,458.00			2,943.31		
	C.N.C.\$	1,485.31										

RE: PRE PACIFIC WAR PENSIONERS

Folio No.	Pensioner	Annual Pension	Amount due to 31/12/45
		Other Currencies	or date of death.
		£ s. d. U.S.\$.	£ s. d. U.S.\$.
82	V. Olsen	264.17. 4.	1,125.13. 8.
101	W. E. Sauer (died 29/4/43)		317. 3.11.
169	R. O. Jackson	132. 5. 0.	433.16. 9.
191	R. P. Roberts	229. 7. 6.	974.16.11.
229	Stirling Fessenden (died 1/2/44)		771. 3. 9.
246	M. C. Jensen	217.15.10.	925.12. 3. 745.79
259	Mrs. R. E. Lane	90.13. 8.	385. 8. 1. 251.64
		934.19. 4.	4,933.15. 4. 997.43

** The total amount to pay the retirement benefits of the former American employees of the Shanghai Municipal Council, including superannuations, sums necessary to fund pensions, gratuities, back pensions and pay and interest is \$396,583.12. An itemized statement of each claim is attached.

** The above statement is made by Robert T. Bryan, Jr.

A P P E N D I X I **

EXTRACT FROM SCHEDULE OF S.M.C. RETIREMENT BENEFITS COMPILED UNDER THE TERMS OF THE MORTCHER DOCUMENT IN RESPECT OF AMERICAN NATIONALS

	Super- annuation (£) U.S.\$.	Super- annuation U.S.\$.	Pay (£) U.S.\$.	Leave Pay U.S.\$.	Gratuity (£) U.S.\$.	Gratuity U.S.\$.	Less Advance (£) U.S.\$.	Total (£) U.S.\$.	Total U.S.\$.	Pension (£) U.S.\$.	Pension U.S.\$.	Pension 8 yrs. arrears U.S.\$.	6% interest pension for 8 years U.S.\$.	Total Super- annuation U.S.\$.	6% interest Superannuation for 8 years U.S.\$.	Pension Fund U.S.\$.	Grand Total U.S.\$.
W. C. Blabon		443.77	839.46		629.96		179.36	1,290.06	443.77					1,733.83	832.23		2,566.06
R. T. Bryan, Jr.	11,948.78	17,925.69	28,132.56	4,575.00			1,096.98	38,984.36	22,300.69		2,433.00	19,464.00	9,342.72	61,285.05	29,416.80	36,699.13	156,207.70
H. M. Ely (died Mar. 1944)		505.48	1,030.14	621.60		619.50	200.67	829.47	1,746.58					2,576.05	1,236.50		3,812.55
C. B. Holt	4,433.80	4,795.96	1,867.09	1,174.85			986.25	5,314.64	5,970.81	323.39	111.24	3,477.04	1,668.97	11,285.45	5,417.01	7,399.58	29,248.05
R. M. Jordan	6,595.43	6,445.49	1,967.70	1,785.83			264.54	8,298.59	8,231.32	642.78	193.61	6,691.12	3,211.73	16,529.91	7,934.35	15,925.10	50,292.20
J. W. Lawler		736.94	3,140.79	552.53	586.92		182.61	3,545.10	1,289.47					4,834.57	2,380.59		7,155.16
R. E. Libby		353.05	1,709.82	573.94	338.70		159.80	1,888.72	926.99					2,815.71	1,231.54		4,047.25
T. O'Dwyer	819.44	1,992.16	2,596.92	1,034.01	1,073.95		261.75	4,228.56	3,026.17					7,254.73	3,482.27		10,737.00
P. M. Pavchinsky (died 28/2/43)	1,748.21	2,580.51	805.10	1,036.57	1,506.55		1,295.91	2,763.95	3,617.08					6,381.05	3,062.89		9,443.92
A. N. Rosanoff (Abroad)	3,129.20				1,181.70			4,310.90						4,310.90	2,069.23		6,380.13
J. J. Sarel		2,375.66	3,500.30	1,122.19	1,155.49		107.09	4,548.70	3,497.85					8,046.55	3,862.34		11,908.89
R. J. Thoenes	525.95	1,372.64	1,202.55		873.75		722.27	1,879.99	1,372.64					3,252.63	1,561.26		4,813.89
G. B. Warmoth, Miss	2,555.64	3,882.38	2,129.82		2,354.02		65.49	6,973.99	3,882.38					10,856.37	5,211.05		16,067.42
No Exchange Adjustment																	
J. H. Dunning		74.26	1,857.93			72.90	3.49	1,854.44	147.16					2,001.60	960.76		2,962.36
TOTAL	31,756.45	43,483.99	50,780.18	12,276.52	9,701.05	692.40	5,526.21	86,711.47	56,452.91	966.17	2,737.85	29,632.16	14,243.42	143,164.38	68,718.82	60,023.81	315,762.58

RE: PRE PACIFIC WAR PENSIONERS

Folio No.	Pensioner	Annual Pension (£) U.S.\$.	Annual Pension U.S.\$.	Amt. due to 31/12/45 or date of death (£) U.S.\$.	Amt. due to 31/12/45 or date of death in U.S.\$.	Total Amount due 31/12/45 U.S.\$.	Int. @ 6% for 7 yrs. U.S.\$.	Amount due from 31/12/45 to 31/12/52 U.S.\$.	Int. @ 6% on 7 yrs. Pension in arrears U.S.\$.	Pension Fund U.S.\$.	Grand Total U.S.\$.
82	V. Olsen (Being paid by Shanghai Power Co.)	1,066.09		4,530.86		4,530.86					----
101	W. E. Sauer (died 29/4/43)			1,276.70		1,276.70	536.21				1,812.91
169	H. O. Jackson (Believed to be dead.)	532.30		1,746.19		1,746.19	733.39	3,726.10	1,564.96		
191	R. P. Roberts	923.22		3,923.75		3,923.75	1,647.97	6,462.54	2,614.26	11,154.34	25,802.86
229	Stirling Fessenden (Died 1/2/44 - No reply from administrators of estate)			3,104.02		3,104.02	1,303.68				4,407.70
246	M. C. Jensen	876.57	175.48	3,725.58	745.79	4,471.37	1,877.97	7,364.35	3,095.08	9,910.59	26,717.30
259	Mrs. R. E. Lane	364.99	59.21	1,551.25	251.64	1,802.89	757.21	2,969.40	1,247.14	7,532.52	14,309.16
		3,763.17	234.69	19,858.35	997.43	20,855.78	6,856.43	20,522.39	8,519.38	28,597.45	80,802.54

** All above figures are in U.S.\$., converted from foreign currencies into U.S.\$., by R. T. Bryan, Jr. Pound Sterling items were converted at the rate of 1£ equals U.S.\$4.02, rate furnished by United States Treasury Department as rate of September 30, 1945. C.N.C.\$ rate taken as C.N.C.\$20 equal U.S.\$1.



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AMERICAN EMPLOYEES OF THE SHANGHAI MUNICIPAL COUNCIL

ACCORDING TO STATES

1. California: William Caspar Blabon, Jr. (Dead but widow resides at 233 South 21st St., San Jose.)

Richard Michael Jordan,
2617 Central Ave.,
Alameda, Calif.

Rose Elaine Lane,
3660 Jurupa Road,
Sunny Slope Heights,
Riverside, Calif.

Valdemar Olsen,
Dolores & Second,
Box 1032,
Carmel, Calif.

Ralph John Thoemmes,
4602 Los Feliz Blvd., Apt. 1 E,
Los Angeles 27, Calif.

Grace Belle Warmoth,
1126 Placer St.,
Reading, Calif.
2. Colorado: Roy Powderly Roberts,
400 South 5th St.,
Montrose, Colo.
3. New Jersey: J. W. Lawler,
8 Stephenville Parkway,
Metuchen, N. J.

Thomas O'Dwyer
364 State St.,
Hackensack, N. J.
4. New York: Crenshaw B. Holt,
236 West 70th St., Apt. 5 E,
New York 23, N. Y.
5. Ohio: Manley Charles Jensen,
27200 Euclid Ave., Apt. 10701,
Euclid, Ohio.
6. Connecticut: John Joseph Sural,
906 Lafayette St.,
Bridgeport, Conn.
7. Virginia: Robert Thomas Bryan, Jr.,
4219 South 12th Road, Apt. 21
Arlington 4, Va.

ADDRESSES UNKNOWN: Jack Henry Dunning

Harold Matthews Ely

Rawson Edward Libby

AMERICAN EMPLOYEES OF SHANGHAI MUNICIPAL COUNCIL - Page 2

DEAD:

William Caspar Blabon, Jr.
(Widow in California)

Stirling Fessenden
(No reply from Administrator)

Richard Ottley Jackson

Peter Michael Pavchinsky
(Heirs & Relatives unknown)

William Edward Sauer
(Widow believed still in Shanghai)

NO PROOF OF AMERICAN CITIZENSHIP: A. N. Rosanoff

W. Caspar Blabon, Jr.	2,500.00
Stirling Fessenden	15,807.70
Richard Ottley Jackson	1,512.50
Peter Michael Pavchinsky	28,248.00
William Edward Sauer	30,392.00
A. N. Rosanoff	7,155.16
W. Caspar Blabon, Jr.	4,187.25
Stirling Fessenden	10,737.00
Richard Ottley Jackson	9,443.75
Peter Michael Pavchinsky	5,350.13
William Edward Sauer	11,800.00
A. N. Rosanoff	4,213.20
W. Caspar Blabon, Jr.	16,051.42
Stirling Fessenden	2,000.00
TOTAL	\$115,700.00

For Pacific War Penalties on the date of their deaths or December 31, 1945, whichever first occurs:

W. Caspar Blabon, Jr.	1,800.00
Stirling Fessenden	1,770.00
Richard Ottley Jackson	25,248.00
Peter Michael Pavchinsky	4,400.00
William Edward Sauer	26,717.00
A. N. Rosanoff	10,000.00
TOTAL	\$69,985.00

The amount of these penalties shall be paid out of the fund established for the purpose of the Pacific War Penalties, and shall be paid to the heirs or relatives of the deceased employees, or to the executor or administrator of their estate, or to the person or persons entitled to the same under the will of the deceased employee.

A BILL
FOR THE RELIEF OF CERTAIN FORMER AMERICAN EMPLOYEES
OF THE SHANGHAI MUNICIPAL COUNCIL

* * * * *

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the persons hereinafter named or their heirs, executors or administrators;

Persons employed by the Council at the time of dissolution:

<u>NAME</u>	<u>AMOUNT</u>	
W. C. Blabon (died Mar. 1950)	\$ 2,566.06	
R. T. Bryan, Jr.	156,207.70	
H. M. Ely (died Mar. 1944)	3,812.55	
C. B. Holt	29,248.05	
R. M. Jordan	50,292.20	
J. W. Lawler	7,155.16	
R. E. Libby	4,167.25	
T. O'Dwyer	10,737.00	
P. M. Pavchinsky (died Feb. 28, 1943)	9,443.92	
A. N. Rosanoff	6,380.13	
J. J. Surel	11,908.89	
R. J. Thoemmes	4,813.89	
G. B. Warmoth, Miss	16,067.42	
J. H. Dunning	2,962.36	
TOTAL	\$315,762.58	\$315,762.58

Pre-Pacific War Pensioners on the date of their deaths or December 31, 1945, whichever first occurs:

<u>NAME</u>	<u>AMOUNT</u>	
V. Olsen (being paid by Shanghai Power Company)	*****	
W. E. Sauer (died Mar. 29, 1943)	\$ 1,812.91	
R. O. Jackson (died June 12, 1947)	7,770.61	
R. P. Roberts	25,802.86	
Stirling Fessenden (died Feb. 1, 1944)	4,407.70	
M. C. Jensen	26,717.30	
R. E. Lane, Mrs.	14,309.16	
TOTAL	\$ 80,820.54	\$ 80,820.54
GRAND TOTAL		\$396,583.12

The payment of these sums shall be in full settlement of any and all claims of the named individuals or their heirs, executors or administrators against the former Shanghai Municipal Council for salaries, retirement

benefits, pensions or any other employment benefits. The payment of any claim pursuant to the provisions of this act shall not be construed as extinguishing or diminishing the liability of China with respect to such claims, but shall be considered as an advance by the United States on account of such claim. Upon the payment of a claim under this act any and all rights of the claimant, his heirs, executors or administrators in respect to such claim against China shall be held to have been assigned pro tanto to the United States, to be enforced by and on behalf of the United States against China, in the same manner and to the same extent as such rights would be enforced on behalf of the United States national concerned. Any person who makes application for payment under this act shall be held to have consented to all the provisions of this act; Provided, That no part of any of the sums appropriated in this act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with the claims settled by the payment of such sums, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

Inasmuch as the sums appropriated by this act are in payment of income earned from sources without the United States which may be excluded from gross income as provided in Section 29.116 (1) of the Income Tax Regulations, said sums are hereby expressly made exempt from Federal Income and Inheritance Taxes and may be excluded from gross income by the recipients or their heirs, executors or administrators.

IN THE HOUSE OF REPRESENTATIVES

April 28, 1953

Mr. Widnall introduced the following bill; which was referred
to the Committee on the Judiciary

A BILL

For the relief of certain American employees of the former
Shanghai Municipal Council.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 That the Secretary of the Treasury be, and he is hereby,
- 4 authorized and directed to pay, out of any money in the
- 5 Treasury not otherwise appropriated, to the persons herein-
- 6 after named the sums set forth after their respective names,
- 7 or to their heirs, executors, or administrators:
- 8 W. C. Blabon, \$1,733.83; R. T. Bryan, Junior, \$117,-
- 9 448.18; C. B. Holt, \$22,162.07; R. M. Jordan, \$39,146.12;
- 10 J. W. Lawler, \$4,834.57; T. O'Dwyer, \$7,254.73; J. J.
- 11 Surel, \$8,046.55; R. J. Thoenmes, \$3,252.63; Miss G. B.

1 Warmoth, \$10,856.37; R. P. Roberts, \$21,540.63; M. C.
2 Jensen, \$21,746.31; Mrs. R. E. Lane, \$12,304.81; total,
3 \$270,326.80.

4 These sums represent the actual amounts due to said
5 American claimants, without interest, of amounts deducted
6 from their salaries and other amounts to secure their retire-
7 ment benefits arising out of their employment by the former
8 Shanghai Municipal Council, an international protectorate
9 which had been sponsored and supported by the United
10 States of America in conjunction with other treaty powers
11 since 1844, and which was the governing body of the In-
12 ternational Settlement of Shanghai until January 11, 1943,
13 when the American and British Governments signed treaties
14 with China, without the prior concurrence of the other treaty
15 powers, which provided for the rendition of the International
16 Settlement at Shanghai without the necessary and essential
17 safeguards to protect the vested interests of the above claim-
18 ants, and by agreeing that the Chinese Government should
19 assume the obligations of the Shanghai Municipal Council
20 to these claimants, deprived these American claimants of
21 their legal remedies except to petition the Chinese Govern-
22 ment for relief, which these claimants have done, to no effect;
23 all of which was done in the general national interest of the
24 United States of America but to the particular financial det-
25 riment of these individual American claimants.

1 The payment of any claim pursuant to the provisions of
2 this Act shall not be construed as extinguishing or diminish-
3 ing the liability of China with respect to such claims but shall
4 be considered as an advance by the United States on the
5 claims of the named individuals or their heirs, executors, or
6 administrators against the Chinese Government for salaries,
7 retirement benefits, pensions, or any other employment bene-
8 fits due them from the former Shanghai Municipal Council;
9 and upon the payment of claims under this act any and all
10 rights of the claimants, their heirs, executors, or administra-
11 tors in respect to such claim against China shall be held to
12 have been assigned pro tanto to the United States, to be
13 enforced by and on behalf of the United States against China.

14 Any person who makes application for payment under
15 this Act shall be held to have consented to all the provisions
16 of this Act: Provided, That no part of any of the sums
17 appropriated in this Act shall be paid or delivered to or
18 received by any agent or attorney on account of services
19 rendered in connection with the claims settled by the pay-
20 ment of such sums, and the same shall be unlawful, any
21 contract to the contrary notwithstanding. Any person violat-
22 ing the provisions of this Act shall be deemed guilty of a
23 misdemeanor and upon conviction thereof shall be fined in
24 any sum not exceeding \$1,000.

25 Inasmuch as sums appropriated by this Act are in pay-

1 ment of income earned from sources without the United
2 States which under pertinent laws may be excluded from
3 gross income, said sums are hereby expressly made exempt
4 from Federal income and inheritance taxes and may be
5 excluded from gross income by the recipients.

83d CONGRESS
1st Session

H. R. 4924

A BILL

For the relief of certain American
employees of the former Shanghai
Municipal Council.

By Mr. Wadsworth

April 28, 1953

Referred to the Committee on the Judiciary