9. The War Regulations which are still in force are contained in the Second Schedule of the War Regulations Continuance Act, 1920.

10. By virtue of the Treaty of Peace Order, 1920, the moneys held by the Public Trustee in his capacity of Custodian of Enemy Property at the date of the coming into force of the Treaty of Peace with Germany were vested in the Public Trustee in trust for His Majesty. It was further provided by the Order that the amount so held, together with any further sums which might be received in pursuance of the War Regulations, should be dealt with and disposed of in accordance with the provisions of the Treaty.

11. Under paragraph (*b*) of Article 297 of the Treaty the Allied and Associated Powers reserved the right to retain and liquidate all property rights and interests in their territories belonging to German nationals. By paragraph (*i*) of the same article Germany undertook to compensate its nationals in respect of the sale or retention of their property rights or interests in the Allied or Associated States. Similar provisions are contained in the Treaties of Peace with Austria, Hungary, and Bulgaria, but not in the recent Treaty with Turkey. (See para. 29, *infra.*)

12. *Justification of the Retention and Liquidation of Enemy Property.*—During the last two years or more there has been a growing feeling of uneasiness in the minds of a number of people regarding the validity or the desirability of the British Empire utilizing the property of private individuals of enemy nationality for the purpose of providing a fund out of which to make payment of debts and claims established by British nationals in respect of commercial transactions with German nationals resident in Germany or in regard to certain losses sustained in respect of their property in Germany and for the purpose of securing payment on account of reparations due under the Treaty of Peace.

13. The following extract from a special report dated 24th December, 1923 (Cmd. 2046), made by the Committee appointed by the British Board of Trade under the Chairmanship of the Right Hon. Lord Justice Younger, G.B.E. (now the Right Hon. Lord Blanesburgh, G.B.E., a Lord of Appeal in Ordinary), to advise upon applications for the release of property of ex-enemy aliens in necessitous circumstances, will be perused with much interest, as it is an authoritative pronouncement upon this important and difficult question. The previous comments made by this Committee and referred to in the undermentioned paragraph were reprinted in paragraph 8 of my Third Report (H.–25, 1923).

(5.) As we ventured to suggest in our Interim Report presented to Mr. Baldwin in May of last year, our view of these Treaty clauses is that the power which the Allied and Associated Powers thereby reserved to themselves to appropriate the private property of enemy nationals within their respective territories found its justification in the obligation imposed by each Treaty upon the enemy Government to make compensation to its nationals so dispossessed. And the Treaty of Peace Orders, by which the charge authorized by the Treaties is in this country made effective to its fullest extent, proceed, we think, upon the same basis.

(6.) It has, we believe, been suggested that these Treaty of Peace Orders may be regarded in quite another light—as being, irrespective of any question of compensation, a revival of or substitute for the ancient prerogative right of the Sovereign of this Realm to seize the private property of enemies on land.

We cannot ourselves so regard them. The prerogative in question, having been in abeyance for over one hundred years before the war, had for the duration of the war been superseded by statute, while there had in the meantime grown up a well-authenticated principle of international law, recognized, for example, in the Hague Convention to which this country was party, that private property of an enemy subject in hostile territory may not be confiscated. Moreover, that principle had been so well esteemed in our law that so long ago as 1817 it was held by Lord Ellenborough that a title so acquired abroad would not as against the original owner of the property be recognized in an English Court.

(7.) But apart from all this we cannot think that these Orders were intended to run counter to the declarations several times judicially made in the House of Lords even during the war that such confiscation was no part of the law of this country. We find Lord Finlay, for instance, saying in that House in 1918: "It is not the law of this country that the property of enemy subjects is confiscated."

(8.) And a closer examination of their terms makes it clear, at least to us, that the charge imposed by these Orders cannot derive from the old prerogative either as a model or an inspiration. The incidents of the two have hardly anything in common. The charge, for example, places an embargo upon an ex-enemy national's property, not only as security for the obligations of his own Government but for those of that Government's allies, which the prerogative never did. The charge, again, does not attach until peace has been concluded: the prerogative was only exercisable, after office found, *durante bello.* The charge, as now authoritatively construed, extends to the property of persons who are British subjects, which the prerogative never could touch. It extends to the property of ex-enemy nationals living in this country under the King's license and protection, which the prerogative never did. And it extends to the property of persons under the disability of infancy, lunacy, or coverture, which probably the prerogative never reached. And in these variants you will find included classes of ex-enemy nationals whose position you have directed us more particularly to consider.

(9.) Not being able ourselves to find the forerunner of these charges either in the old prerogative right or anywhere else, we are confirmed in our conclusion that the adequate compensation elsewhere bargained for is the real justification for a charge so general, and the question upon which we have to advise is how far in the cases mentioned by you that charge may be recommended for release now that it has become apparent that the stipulated compensation is nowhere forthcoming in full, and, so far as Germany is concerned, is no longer forthcoming at all.

14. Mr. Justice Romer during the course of his judgment in the case of Luxardo *v.* The Public Trustee (Recueil III, at p. 487; W.N. 1923, p. 181) offered the following explanation of the provisions of Article 249 of the Treaty of St. Germain-en-Laye in connection with the retention and liquidation of Austrian property in the United Kingdom:—

I will first consider the effect and object of the provisions of Article 249. Now, under the Treaty of Peace with Austria that country might, and in all probability would, become indebted to this country and its nationals in a considerable sum of money. It had by Article 248 (*b*) agreed to make itself responsible for certain debts due by its nationals resident within its territory to British nationals resident here. By Article 249 (*e*) it made itself liable to pay compensation to British nationals in respect of certain damage done to the property rights and interests of British nationals. It had, furthermore, under Part VIII of the Treaty, dealing with the subject of reparation, accepted responsibility for causing the loss and damage to which the British Government and its nationals had been subjected as a consequence of the war. It was therefore only reasonable to expect that the Treaty should provide means for the discharge of these liabilities of Austria to this country in the way most convenient to all parties. The Treaty, as I understand it, has adopted the method usual in commerce for discharging the liability of a merchant resident in Austria to one resident in this country. Such a liability was not discharged by shipping gold to this