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**Lehigh Valley Railroad Company, Agency of Canadian Car and Foundry
Company, Limited, and Various Underwriters (United States) v. Germany
(Sabotage Cases)**

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LEHIGH VALLEY RAILROAD COMPANY, AGENCY OF CANADIAN
CAR AND FOUNDRY COMPANY, LIMITED, AND VARIOUS
UNDERWRITERS (UNITED STATES) *v.* GERMANY

(*Sabotage Cases, October 16, 1930, pp. 967-994.*)

SABOTAGE DURING PERIOD OF AMERICAN NEUTRALITY. — EVIDENCE: WITNESSES, AFFIDAVITS. — ARBITRATION: GOOD FAITH, OBLIGATION OF PARTIES TO TRY TO ASCERTAIN TRUTH. Fires at "Black Tom Terminal", New York Harbour, of Lehigh Valley Railroad Company, July 29-30, 1916, and in Kingsland, N. J., plant of Agency of Canadian Car and Foundry Company, Limited, January 11, 1917. German sabotage? Analysis of evidence (testimony by witnesses, affidavits). *Held* that in Kingsland case fire not caused by authorized German agent, and that in Black Tom case such cause not sufficiently proved. Governments who agreed to arbitrate are under obligation in entire good faith to try to ascertain truth. (Decision subsequently set aside: see decision of June 15, 1939, p. 225 *infra*.)

(*Cross-reference*: A.J.I.L., Vol. 25 (1931), pp. 147-168.)

(*Bibliography*: Witenberg, Vol. VII, pp. 6-9; Woolsey, A.J.I.L., Vol. 33 (1939), p. 738.)

These two cases involve claims for damages resulting from fires. The first relates to the fire which occurred on the night of July 29-30, 1916, at the terminal yard of the Lehigh Valley Railroad Company in New York harbor, known as the Black Tom Terminal, and is known as the Black Tom Case. The second relates to the destruction of the Kingsland plant of the Agency of Canadian Car and Foundry Company, Limited, at Kingsland, New Jersey, and is known as the Kingsland Case. This fire started in the late afternoon of January 11, 1917. The two cases have from the beginning been carried along together, both in the taking of the evidence and in the arguments. It will be convenient to deal with them in one opinion.

The questions involved are questions of fact. Germany and the United States, now friendly nations, have entered into an agreement under which Germany accepts liability for such damage during neutrality to citizens of the United States, if the damage resulted from acts of her authorized agents.

The Commission has no difficulty with the question of authority in these cases. The persons alleged to be responsible for causing these two fires to be set — either by participating in the act themselves or by employing sub-agents of their own — were in such relation to the German authorities, and some of them in such special relation to Nadolny and Marguerre, who were in charge of the Political Section of the German General Staff, or to Hinsch, that Germany must be held responsible if they, or some of them, did cause the fires to be set. The Commission does not need direct proof, but on the evidence as submitted we could hold Germany responsible if, but only if, we are reasonably convinced that the fires occurred in some way through the acts of certain German agents.

We have no doubt that authority was so given by Marguerre in February, 1916. Marguerre himself so testifies. Nadolny had on January 26, 1915, sent a cable authorizing such sabotage. Nadolny in his evidence gives the impression that the policy was abandoned shortly after his cable. Marguerre testifies that the authority given by him in 1916 was not to be exercised during neutrality, but only in case the United States entered into the war. We do not believe his evidence with respect to this alleged limitation of the authority, though.

It is well recognized that Governments who have agreed to arbitrate are under obligation in entire good faith to try to ascertain the real truth. Nadolny may have suppressed evidence as to his knowledge of the instructions given by Marguerre, and we think, though of course we may be mistaken, that Marguerre did not tell the truth. Nadolny's examination was confined wholly to his cable, and the Marguerre instructions were not at that time a feature of the case. We cannot be sure of what Nadolny knew, and would not be willing without further evidence to accuse him, but we have felt it necessary to mention the possibility. It is also apparent that von Stempel of the German Legation in Chile, in another connection, failed to communicate to the Commission statements made to him by Herrmann, which tended strongly to cast doubt upon an affidavit of Herrmann which von Stempel was forwarding to the Commission, though it should be added that we can easily understand that von Stempel did not believe these boasting tales of Herrmann, who even then, apparently, did not admit complicity of himself or Hinsch in Black Tom or Kingsland. Marguerre's personality does not seem important, but Nadolny and von Stempel are diplomatic representatives of Germany. Von Stempel was a young man, unfamiliar with the case, and probably did not fully realize his obligation as a diplomatic representative to the Commission and to his own Government.

In speaking as we have of Nadolny, Marguerre, and von Stempel we have not the least intention to raise any doubt as to the entire good faith of the present German Government in its management and presentation of these cases, nor of the Agent who has represented Germany as counsel. And in order that this last statement may not be construed as merely conventional courtesy, we state specifically that we have no such doubts. We believe that the present German Government was entirely prepared to bring out the truth and to take the consequences, whatever they might be.

It is unnecessary to go further and determine whether such sabotage was the general policy of the then German Government. The Foreign Office did specifically authorize the cable, already referred to, which Nadolny sent to the Embassy in Washington. We are inclined to think that the diplomatic representatives in the United States were not in accord with the idea and did nothing in the way of exercising this particular authority. There was an admitted policy to destroy and damage property of the nations at war with Germany at this time and later, and it is obvious that such acts if committed in or from the United States were serious violations of neutrality, that agents engaged therein were not likely to discriminate very carefully between acts on United States territory and acts outside the United States, or between property belonging to Germany's enemies and property not yet delivered, but intended for Germany's enemies. But in general we are all inclined to the opinion that Germany's diplomatic representatives in the United States were averse to attacks on American property, that their opposition to such a policy, so far as they, possibly, knew or suspected that it was being carried out, became stronger as the relations between the United States and Germany became more and more acute. We see no evidence in these cases, however, that such authority as the Political Section of the General Staff gave was ever modified. And up to the entry of the United States into the war there were in the United States certain German agents who were, or at least pretended to be, active in sabotage work. But we are also convinced that the number of agents so engaged was always small in proportion to the field to be covered, that they were never organized effectively, and that their numbers and effectiveness continually decreased, partly because of difficulty of communicating with Germany and other difficulties inherent in their situation, and even more

because of efficient counter-work by the United States Secret Service and prosecuting officers. We are convinced also that their pretensions in such reports as they may have made and in their talk with each other were for the most part gross exaggerations of their actual accomplishments.

With this background, which renders inferences against Germany easier than they would otherwise be, we approach the evidence as to the German agents and their alleged tools. We found ourselves absolutely in agreement as to this background upon our first consultation after the close of the arguments and before we had considered at all the responsibility of any of the German agents.

These cases have been argued twice, the second argument having been necessitated by the production of new evidence. The second argument has occupied the most of ten days, and it has not been too long in view of the enormous record of evidence and the details which the counsel were obliged to cover. We have no intention of covering all these details in our opinion, but it seems desirable that we should indicate as briefly as possible our views as to some of the more prominent features of the evidence, although we will begin by stating our final conclusions, viz.:

In the Kingsland Case we find upon the evidence that the fire was not caused by any German agent.

In the Black Tom case we are not convinced that the fire was not attributable to Hinsch and Kristoff, though we are convinced that it was not attributable to Witzke or Jahnke. But we are quite a long way from being convinced that the fire was caused by any German agent.

We therefore decide both cases in favor of Germany.

In the Kingsland Case the persons possibly involved as participants are Witzke, Jahnke, Hinsch, Herrmann, Wozniak, Rodriguez, and Thorne. The evidence relating to Witzke and Jahnke is mainly in the shape of alleged admissions by Witzke and is intermingled with his alleged admissions in connection with the Black Tom Case. This evidence makes no impresson whatever upon us with respect to the Kingsland Case, but the fact that it does refer to the Kingsland fire as well as to the Black Tom fire tends to weaken the effect of the alleged admissions as to the Black Tom Case. On the evidence we are satisfied that Witzke and Jahnke were not in the east at the time of the Kingsland fire, and eliminate them from further consideration in connection with Kingsland.

The Kingsland fire of January 11, 1917, started in a building devoted to the cleaning of shells. It started at the bench of a workman named Wozniak. The case against Germany in substance depends upon whether Wozniak started this fire, under Herrmann's direction.

Until Herrmann, who was undoubtedly a German agent and had previously testified that he had nothing whatever to do with the Kingsland fire, changed his attitude and testified that he employed Wozniak to start the fire there was nothing from which we could reasonably infer either that Wozniak was a German agent or that he caused the fire. Hilken, another German agent, since Herrmann changed his testimony, has testified that Herrmann told him long ago the same story that Herrmann now tells. Hinsch, the man whom Herrmann connects with himself in the story, has denied it. His denial contains plausible details, but we could not rely on it if we felt that Herrmann was now telling the truth, for though we have no evidence that Hinsch is a liar, there is a strong presumption that he might be under circumstances which pointed to his guilt.

Hilken and Herrmann are both liars, not presumptive but proven. No one could in the light of all their evidence believe anything either says unless

something other than his own assertion confirmed his statements. Hilken's first long and detailed statement in these cases contained nothing of what he now says in respect to Kingsland. He had previously testified before the Alien Property Custodian and had lied continuously. In his first statement for the Commission he professes his willingness to tell the entire truth. If he did, there can be no truth either in his or Herrmann's present story. Later he admits that he did not earlier tell the whole truth, and explains his failure to do so by his unwillingness to implicate others. But after this first testimony to the Commission he was sent by counsel for the claimants to Chile to persuade Herrmann to testify, in which mission he failed. On his return he made an affidavit covering his conversations in Chile with Herrmann. In this affidavit it is evident that he had no further desire to shield Herrmann, if he ever really had such a desire. He tells of various things which Herrmann said to him which he knew were not true, and pretends to tell what he knows to the contrary. But he says nothing about his knowledge of the story Herrmann now tells about Kingsland. If Hilken had not mentioned Kingsland in this affidavit, his present story would be more credible. But he says that he asked Herrmann about Kingsland and that Herrmann in Chile denied all knowledge of it. Instead of reporting that Herrmann had previously told him all about it, as he now testifies, he adds to Herrmann's denial merely the statement that Herrmann had previously told him that he and one Gerdtz once rode over to look at Kingsland after the fire.

Herrmann's present story has in its favor whatever presumption arises, even after repeated denials, from the fact that he is confessing his own participation in a crime of serious importance. We know also that some of the things he previously denied are true. We know, or at least believe, that he was authorized in Berlin by Marguerre to commit sabotage during neutrality, and we know that he was supplied by Marguerre with inflammatory devices in the form of pencils, containing glass tubes. Appropriately manipulated the chemicals in the tubes would mix after an interval of from 15 to 30 minutes and cause a flame. But his testimony now with respect to Kingsland and Black Tom is not at all that of a witness who for reasons of conscience desires to make a clean breast. Whether he now means to tell the truth or means to lie, he is testifying solely because of the fact that he has lost his position in Chile, that the German Government has not taken care of him, and that by testifying he has secured the chance to get back to the United States with a guaranty of immunity. We do not imply or think that anything improper was done to induce him to testify, merely that it is sufficiently obvious that Herrmann would not have turned his coat if the German Government or the German Legation in Chile had offered him appropriate inducements, and that having turned his coat because of advantage to himself he is pretty sure to be in a mental attitude in which hostility to Germany and desire to make good with the claimants play a substantial part. And there is nothing about Herrmann of which we feel so sure as that he will lie if he thinks lying worth-while from his own point of view.

His story is, in brief, that he planned in accordance with instructions from Nadolny and Marguerre to commit sabotage in Kingsland, that he applied to Hirsch to furnish a man, that Hirsch said he would and brought Wozniak to him, that he learned from Wozniak, not from Hirsch, that Wozniak was working in the Kingsland plant and that Wozniak thought he could accomplish something, that after one or two interviews he got distrustful of Wozniak, who seemed to him like a "nut", told Hirsch so and asked him for another man. Hirsch then brought Rodriguez to him. Herrmann then brought Wozniak and Rodriguez together and asked Wozniak if he could get Rodriguez a job

at Kingsland. Wozniak said he could as he had a pull with the employment bureau. Still later he met the two and learned that Rodriguez had the job. He then gave them each some of the inflammatory pencils, told them how to fix them up, and instructed them to put one in a coat pocket somewhere, standing up straight. The chemicals would do the rest. He paid them not over \$40 a week — he did not seem very sure how much — during this short period. After the fire he saw Rodriguez once, but he never saw Wozniak again. He asked no questions whatever of Rodriguez, but paid him \$500, gave him a fictitious address and never saw him again.

Herrmann's story is somewhat confirmed by the fact that probably Rodriguez was employed about the time Herrmann says, shortly before the fire, and by the fact that Wozniak has peculiarities which might lead Herrmann to characterize him as a "nut", though the word "crank" would really be more accurate. On the other hand, Herrmann before he had told this Wozniak story had seen enough of the early arguments, briefs, and affidavits in the case to know of Wozniak, to suspect him of being a bit queer, to know that the fire started at his bench, to know that Rodriguez was supposed to have usually worked next to Wozniak. But there is nothing to show that Herrmann could have learned beforehand that Rodriguez had been employed only a short time, though this is not impossible. Herrmann's attention would before his testimony have been focussed somewhat on Rodriguez because in the early stages of the case Herrmann himself was suspected of having been the Rodriguez who worked at the plant. This suspicion was probably due to the fact that Herrmann used the name Rodriguez when he was in Mexico before going to Chile. It is argued that the fact that he used this name is a confirmation of his present story, that the name came into his head because he had employed Rodriguez. But it seems to us unlikely that Herrmann would take in Mexico the name of someone whom he had employed to set the Kingsland plant on fire, and Rodriguez is a common enough name in Spanish countries. In fact there were 20 different men named Rodriguez on the payroll at Kingsland at different times.

Herrmann's story, as stated above, appears at its best, but there are internal difficulties in the story itself. A man named Thorne plays an important part in the theory relating to Wozniak and Rodriguez. Thorne was in the employment office of the Kingsland plant, and the theory is that he was well known to Hinsch, that Hinsch had Wozniak and Rodriguez at his command, and that Rodriguez must have obtained his employment through Thorne. There is a good deal of evidence that throws suspicion of some sort on Thorne, so far as sympathy with Germany, general lack of morals and willingness to do shady things are concerned, but nothing convincing to show Thorne's acquaintance with Hinsch. Hinsch denies acquaintance with Thorne, but it was certainly possible that he did know him. Herrmann says he did not know Thorne, though there is some evidence that he did. Wozniak had been in the plant six months at least, and so had been there several months when Thorne was employed as an assistant in the employment office. If Hinsch had had Wozniak at his command and in the plant, there was no very good reason why Herrmann should have taken part in the scheme to have Wozniak do the work. If these other allegations are true, Herrmann would not have asked Wozniak where he was working, as he says he did the first time he saw him. He would not have asked Wozniak, as he says he did, if Wozniak could get Rodriguez a job. And Hinsch would not have assented without any discussion, as Herrmann says he did, to Herrmann's estimate of Wozniak as unsuitable for his purpose. Herrmann's story of his conversations with Wozniak and Rodriguez is strangely lacking in the details which would be inevitable in such conver-

sations, if he ever employed these men for the purpose and in the way he says he did. He was pressed by German counsel for any further details of these conversations, but we get no talk as to how or where they could set the fire, or whether a fire was likely to be effective if set in Wozniak's building, no discussion of particulars with either of them except the instructions as to the pencils which were quite explicit. This lack of detail might have been explained by the fact of which we are convinced that Wozniak's knowledge of either English or German was extremely limited. But Herrmann says that the conversations were in English and that Wozniak spoke English freely though with an accent, a statement which in view of our judgment as to Wozniak's ability to speak English at that time arouses further distrust.

And the job, according to Herrmann's story, seems to have been turned over by Herrmann to Rodriguez after he came on the scene. Rodriguez, not Wozniak, was the man relied on. Rodriguez was the only one of the two who turned up after the fire, and Herrmann explicitly says that he asked him no questions at all but paid him \$500 and never saw him again. And yet Wozniak set the fire if anyone did. And Rodriguez, the only man Herrmann saw after the fire, the only man he paid after the fire, was not at the Kingsland plant at all on the day of the fire.

If there is one thing sure about Wozniak, it is that Wozniak was keen for money. That he would not have come after his money himself is inconceivable to us with our knowledge of Wozniak's previous and contemporary life and habits. We have a great deal of evidence about Wozniak's earnings and his use of his money, but we get no indication whatever that he actually got any of the money that Herrmann said he paid.

Again, Herrmann's description of Wozniak corresponds exactly with a poor photograph of him which, we think, Herrmann had seen before he told his story, and differs in two quite important particulars from the real Wozniak. Herrmann's story of Wozniak's presence later in Mexico also arouses our suspicion, partly because we are quite certain that Wozniak never was in Mexico, partly because it is improbable that, if he had turned up in Mexico, Herrmann would not have seen him, and partly because, whether Herrmann saw him or not, his talk there in Mexico with Hinsch about Wozniak's presence in Mexico could not possibly have been so casual and inconsequential as Herrmann states that it was.

The discrepancies and improbabilities of Herrmann's story tend to strengthen our very strong impression from Wozniak's acts and statements at the time of the fire and shortly thereafter and from the circumstances of the fire that Wozniak was not guilty. In the same way our impression of Wozniak, derived from careful study of these acts and statements and circumstances, tends to increase our doubt of Herrmann's sincerity in his latest evidence.

Our impression that Wozniak is innocent is not due to his own protestations of innocence. Any man, however guilty, might claim innocence, and Wozniak has shown in connection with matters having nothing to do with the fire that he would not let a little thing like truth stand in his way.

Our impression is derived first from the circumstances connected with the fire itself. Gasoline was used in cleaning the shells and the fire spread quickly, so that there was great excitement and confusion. The interval between the time when the first small flame was seen and the time when everyone present ran for his life was very short. The pan of gasoline close to Wozniak's machine (as in the case of all the 48 machines) would account for this, but in addition one workman says that one of the men threw a pail of water on the bench where the flame first appeared. (The fire buckets in the building contained water instead of sand.) Wozniak says he made an effort to stifle the fire, and

there is evidence of another workman that he saw Wozniak make some such effort. If we were called upon to guess what caused the fire from the evidence of the circumstances, we should without hesitation turn to the machine which held the shell which Wozniak was cleaning. There is strongly persuasive evidence that these machines required constant watching, that when out of order they squeaked and threw out sparks, and that fires, quickly extinguished, had previously occurred from this source, and there is some evidence from a workman close by of squeaking and of sparks from Wozniak's machine just at the time of the starting of the fire. Wozniak himself does not mention this in his contemporaneous statements, though he later mentioned it merely as a possible explanation. In fact he says that his machine was running well that day, though it had sometimes run very hot. To Wozniak the fire seemed to originate in the rapidly revolving shellcase itself and to follow the rag wound around a stick with which he was drying the shellcase when he withdrew the rag. It is interesting to find that his own statement is the only one which bears any resemblance to what would have happened if he had used one of the inflammatory pencils with which Herrmann says he supplied him.

Wozniak, as we have said, is not a "nut", but a crank. He is in a way smart, though naive, and thinks he is smarter than he really is. How could such a man, or any man who had for some time been studying and planning how to set fire to the plant, start the fire at his own bench, where attention would necessarily be directed to him, to say nothing of the fact that the particular place and the particular building would not, to persons planning beforehand to set a fire, seem to be places where a fire once started would be particularly likely to be effective, as this fire certainly was? And that a smart crank like Wozniak should after starting the fire with an inflammatory pencil describe its beginning in a way which had even a slight resemblance to a pencil fire is equally incomprehensible. Also incomprehensible is the fact that a man like Wozniak should not have had ready, when he was examined a day or two later, some plausible explanation of the cause of the fire, but he certainly had no explanation at hand, though later he made various suggestions and possibilities.

Although, as we have said, Wozniak's description of the starting of the fire bears some resemblance to what might have happened if a pencil had been used, the resemblance is not close enough to make us suspect that a pencil was actually used. But more important is the fact that Wozniak, if he used a pencil, must have abandoned completely Herrmann's instructions as to how to use the pencils. The pencil was intended to enable an incendiary to start the fire at a time and place when and where he could not be connected with it. The pencil was devised to operate only after the lapse of from 15 to 30 minutes. It was not at all adapted to starting a fire at the place where the incendiary intended to remain. Besides, the pencil needed to stand upright, and the shell from which Wozniak said the fire seemed to start was in a horizontal position revolving in Wozniak's machine in the process of cleaning and drying. The shells seem to have passed through the various phases of this process at the rate of about three every two minutes, an average of about 40 seconds each. Even if we assume that Wozniak had found some way — Herrmann evidently had not — to make the pencil work faster, we cannot adapt the pencil idea to the actual process, and cannot imagine that anyone planning the fire in advance would have considered it possible to use the pencil there under the eyes of the other workmen close by. Rodriguez and Wozniak are supposed to be working together on this plot. They are instructed by Herrmann and provided with pencils. They talk and plan together — supposedly — how to do the job. There are toilets available; there are workmen's coats somewhere; there are even coats hanging about that particular room; there are

cases of clean rags; there are dirty, gasoline-soaked rags; there must be other opportunities of which we have no evidence. And yet we are asked to believe that Wozniak started the fire with a pencil in a dry shellcase, which was revolving in his own machine at the end of this process which as a whole lasted about 40 seconds. And Rodriguez, the man really relied upon, was not there that day.

The evidence as to Wozniak's conduct at the moment, his examinations, his conduct during the weeks immediately succeeding, his relations with the representatives of Russia, his life before the fire and afterwards almost to the present, his disappearance, his reappearance and his subsequent testimony, his alleged appearance in Mexico among the German agents there, occupy many pages of the record and could be discussed here ad infinitum, as they have properly been discussed almost ad infinitum by counsel in their briefs and arguments. Suffice it to say that we do not believe that he was in Mexico; that the letters he wrote the Russian Embassy before the fire are in our judgment not a blind, but exactly such letters as Wozniak would compose, and indicate to us that he really, as he says, was at heart Russian, intended to go to Russia, and was shocked at the carelessness and, as he thought, corruption of the inspectors at this plant which was assembling shells for Russia; that without relying at all on his honesty of statement he nevertheless seems to us to act and talk like a man who is really innocent in respect to this fire. It is of some significance that through the Russian Consulate he sent \$90 to Russia the day after the fire — not the act of a man who the previous day had destroyed this supply plant for Russian munitions, and whose money or part of it came as pay for such destruction. The picture of him which one gets from reading the reports of the four detectives who watched him night and day for about four weeks following the fire is a picture of a man frugal in the extreme, living at the Russian Immigrants' Home, buying and cooking his own meals, milk, bread, occasionally a little fish or meat or fruit, reading Russian papers or books a good deal, quiet, with no luxuries or dissipations, almost no acquaintances, no suspicious actions, no suspicious meetings, no indication whatever that he had anything to do with his supposed co-conspirator Rodriguez or anybody connected with Germany.

And so, despite Herrmann's confession, the evidence in the Kingsland Case has convinced us that Wozniak did not set the Kingsland fire, and that Germany cannot be held responsible for it.

In connection with Black Tom we shall not mention some possibilities which have practically been abandoned by the claimants, or some agents who have not been abandoned in argument, like Sauerbeck for instance. We have not ignored them. but we do not think them worth talking about in connection with Black Tom.

The picture of the fire itself, which we have in our minds as the result of our study of the voluminous, detailed, and often contradictory evidence, shows a large railroad terminal on the Black Tom promontory which stretches out from the Jersey side into New York harbor not far from Ellis Island. This terminal is full of railroad cars, many of them loaded with ammunition. At one point is a dock to which on that night were tied up a number of barges, some of which, like the cars, were loaded with shells and TNT. The yard was guarded and watched, but access to it by intentional incendiaries, particularly from the New York harbor, was certainly not impossible, perhaps not difficult. The fire started in the middle of a clear, fairly calm night at about 12:45 a.m., in the form of a small blaze which was discovered by the watchmen, breaking out around the door of a wooden boxcar which probably contained explosive shells filled with smokeless powder. There is some claim of more than one

fire, but we do not believe there was. The fire spread, the explosions occurred, and the damage was great. It is somewhat difficult to understand how incendiaries under the circumstances as we picture them could have secured access to this car, broken into it, and set the fire without being seen or heard. Nor does it seem likely that careful planning beforehand would have resulted in setting fire at this part of the yard, or in one car, or in this particular car. There were other points of approach and other methods which in advance would have seemed more likely to produce results. But there is nothing in the circumstances which excludes incendiarism. The fact that smokeless powder, properly prepared, is conceded by experts not to be subject to spontaneous combustion is a strong argument in favor of incendiarism. But the Lehigh Valley Railroad Company in its defense to the suits brought against it for negligence relied largely upon spontaneous combustion, and we get the impression that their counsel had real faith in this particular defense. And yet they then had in their possession a good deal of the evidence which we now have which tends to implicate Kristoff.

So far as we can see, the circumstances of the fire leave the question of its cause open. It may have been some fault in the preparation of the powder in the shells in this car; it may have come from some other cause connected with explosives, for though we know of no cause which would naturally be suggested by the supposed contents of this car we are suspicious of explosives in general; it may have come from some other accident of which no evidence appears; of course the fire may have been of incendiary origin, and in this connection it may be noted that all incendiaries are not German agents. We can be sure, however, that any German agent seeking for a chance to destroy munitions would have looked upon Black Tom with the keenest interest.

Leaving out of account some alleged suspects who are not worth attention, there are two theories which attribute the fire to German agents. One of these theories centers about Witzke and Jahnke; the other around Kristoff. Both theories have been urged upon us strongly. The two theories may be combined into one theory, viz., that all three took part. The two theories never have been, in fact, so definitely separated in the arguments or in the evidence as our statement above would imply. But we insist upon the separation. We are sure that if Witzke and Jahnke were concerned in Black Tom no person like Kristoff would have been needed or used. He would have been not only a superfluity but a nuisance, even a menace. Witzke and Jahnke strike us as capable, capable where German interests were involved of desperate measures not in the least in need of assistance from an individual like Kristoff. We do not believe that they would even have trusted Kristoff to row a boat, much less to take a real part in any Black Tom expedition.

Witzke took part in an expedition from Mexico into Arizona after the United States entered the war. He was betrayed by his companion, Altendorf, who was in the employ of the United States as well of the Germans, convicted as a spy by court-martial, sentenced to death. He was a spy and the sentence was appropriate, but it was later commuted to life imprisonment and still later he was released. The evidence of participation in Black Tom by Witzke and Jahnke consists chiefly of admissions alleged to have been made by Witzke to his companion Altendorf before he was captured, with some confirmation by another companion, Gleaves, and by others including one or two guards who talked to him during his confinement. The alleged admissions cover not only Black Tom but also Kingsland. Witzke has consistently denied these admissions during his trial and confinement and since his release. As we have so definite an impression about Kingsland, the inclusion of Kingsland in his supposed admissions would of itself make it almost impossible for us to accept the admis-

sion so far as concerns Black Tom. Altendorf, the chief witness as to admissions by Witzke, is also the chief liar who has appeared in the cases before us, a chief among competitors of no mean qualifications. The details, so far as any details appear in the supposed admissions, have little relation to probability, even if we assume that Witzke and Jahnke were actually involved in Black Tom. It is perhaps unnecessary to add anything to the above, but we are also satisfied from the evidence that Witzke and Jahnke were not in the east at the time of the Black Tom fire.

The only effect which all the evidence and argument with respect to Witzke and Jahnke has had upon us is to add considerably to the doubts which we would in any event have had with respect to the evidence implicating Kristoff. Kristoff never set the Black Tom fire alone. Witzke and Jahnke being eliminated, there are no persons in the evidence who seem at all likely to have been his companions, a fact which is nowhere near conclusive but which adds to our doubts. And the actual evidence against Kristoff is so nearly of the same nature as these categorical admissions attributed to Witzke that when we find ourselves satisfied that Witzke's alleged admissions mean nothing to us our doubts as to analogous admissions and other analogous testimony are strengthened.

Suspicion was focussed very early on Kristoff in connection with Black Tom. He lived at the time at Bayonne, N. J., with an aunt, Mrs. Rushnak, whose daughter was Mrs. Chapman at whose house Kristoff had sometimes roomed earlier. A day or two after Black Tom Mrs. Chapman reported to Lieutenant Rigney, a police officer of Bayonne whom she knew well, that Kristoff had reached home on the night of the fire at about four o'clock in the morning, that he was greatly excited, and that her mother heard him walking in his room and heard him say "What I do! What I do!" and that they suspected him of being responsible for the Black Tom fire. We feel sure that this is all they reported. Both Rigney and Charlock, a detective who was assigned to the case and followed it assiduously, say so, and we take pleasure in adding that we believe them. We also believe what Mrs. Chapman then reported to Rigney, and we believe that the two women really suspected Kristoff. Later Mrs. Chapman said that she at some earlier time saw something like a blueprint or blueprints in Kristoff's room, when he was in her house, and that in his absence she once read a letter, which he had written but had not yet sent, to a man named Grandson or Grandor, demanding a large sum of money. We do not believe that Kristoff had a blueprint, certainly not for his own use, for we do not believe that he could use one. His own story about Graentsor makes it possible that he wrote a letter such as Mrs. Chapman described, but we doubt any story told by her after Kristoff's own story to the police came to her knowledge. The value of any evidence by Mrs. Rushnak and Mrs. Chapman, except as to Kristoff's late arrival, his excitement, and the "What I do!", will appear from their later statements. Mrs. Chapman said later that Kristoff was in the habit of going away on trips and that wherever he went there was always an explosion, and they both said later, some ten years or more later, that Kristoff told Mrs. Rushnak the morning after the fire that he had set the fire. We feel quite sure that they really suspected Kristoff in spite of the fact that Mrs. Chapman's husband later told Green in Charlock's presence that his wife had reported the matter to Rigney merely because she was in a family way and thought she might get some money from the Lehigh Valley Railroad. As to the reasonableness of their then suspicion, we can judge only by our own guess from the late arrival, the excitement, and the "What I do". Mrs. Chapman's and Mrs. Rushnak's judgments on a given state of facts are worthless. At this stage of the evidence we can only add that Kristoff was a man who

probably returned late at night at other times, that excitement whether for a good reason or for a trivial reason was probably not an unusual event for Kristoff, and that if he was excited it is unlikely that he expressed his excitement in the English language. The "What I do! What I do!" is probably Mrs. Rushnak's translation of what she heard Kristoff say. But at the same time it is hardly likely that it is not a substantially correct translation.

The name Grantnor is of great significance in this case. The connection between Kristoff and Hinsch, who was a German agent and who is alleged to have used Kristoff as his tool in Black Tom, depends substantially on whether Hinsch used the name Grantnor as an alias. One Frank Oscar Granson seems to have been actually an individual who later was a witness in the Rintelen case, whom Hinsch is supposed to have known. The theory pressed upon us is that Hinsch in seeking aliases was accustomed to adopt names familiar to him and so adopted Granson. Why he should have changed it to Grantnor, or Graentnor, as it is more commonly spelled in the evidence, and why he should have changed Frank to Francis, is not explained. The actual spelling is of importance, for Grantnor is an English name and Graentnor is not, and Grantnor and Graentnor are pronounced differently. The significance of the spelling applies particularly to Herrmann's evidence, for Herrmann was obviously in doubt as to the spelling. Herrmann to corroborate his testimony that Hinsch used the name Grantnor says that he laughed at Hinsch for using the name because it was an English name and Hinsch, as was obvious to anyone, was a German. There is no sense in this testimony of Herrmann if the name was spelled Graentnor or if Herrmann thought it might have been so spelled. Herrmann, though born in the United States, was a thorough German — knew the German language thoroughly. He could not have called Graentnor an English name, and he could not have imagined that a name, which he had heard often pronounced and was accustomed himself to pronounce Grantnor, might possibly be spelled Graentnor.

The name, whatever it is, appeared first in Kristoff's story to the police on his arrest in 1916. We have a verbatim report of one of these examinations. As Kristoff first used the name here, it is spelled Graentsor. In the other places in this report it appears as Graentor and many times. How it was then pronounced we do not know. In the police examination of Kristoff later in 1921, the name appears as Gramshaw, indicating that Kristoff when using the name himself always insisted on the "s". Kristoff does not seem to have raised any question in his first police examination as to the dropping of the "s" by his examiners, or as to the pronunciation, whatever it may have been. But Kristoff was not the kind of man to worry about such changes so long as he understood what man they were asking him about. And Kristoff was not the kind of man to invent the name, whatever the name was. He must have known some man who called himself either Grantsor, Grantnor, Graentnor, Grandor, or perhaps Gramshaw.

Rigney and Charlock were of the Bayonne police force. As Black Tom was in the jurisdiction of the Jersey City police, Rigney reported Mrs. Chapman's story to them. At their request Rigney arrested Kristoff about 30 days after the fire and turned him over to the Jersey City police. The case was in charge of one Green, now dead, but Charlock kept in close touch with it. Kristoff was committed as a suspicious person on a disorderly-conduct charge, held for about 25 days, and then discharged. During this time the police became convinced that he ought to be examined for insanity, and he was so examined by Dr. King of the prison where he was confined. King, who seems to have had substantial experience in this line, reported that his intelligence was of low order, that his talk was rambling and he could not keep his mind on any given

line, but that he was not in his opinion dangerous. King made up his mind that Kristoff had nothing to do with Black Tom. Rigney and Charlock came definitely to the same conclusion. We do not know what Green thought, but the fact that Kristoff was discharged makes it certain that at the least the Jersey City police had not sufficient evidence to make the charge against him, and it is significant also that they did not keep Kristoff under surveillance or do anything else towards pushing the matter further. Their judgment is important, for they certainly had a good deal of the evidence now so strongly relied upon.

One of the main points now relied upon is the breaking-down of Kristoff's alibi. But that alibi broke down at once. Kristoff on being questioned by the police said he was at the time of the fire at the house of his aunt at Yonkers. Green apparently went to his aunt's house and was told he had not been there that night. It does not definitely appear that Green made further investigation on this point.

But we can have no doubt that the police, before letting go of Kristoff, not only cross-examined him thoroughly about this broken-down alibi but that they catechized Kristoff time and again about this and everything else suspicious or doubtful in his statements or his actions so far as they could learn of them; his returning late, why he was excited, why he said "What I do! What I do!", his Graentnor story — everything they could possibly think of. Rigney said he did his best before turning him over to the Jersey City police. Charlock said he examined him many times, the last time when he was discharged. Green and others of the Jersey police must have done the same thing. Green particularly could not have dropped the alibi *after* he had broken it down, or dropped Kristoff until he had tried to get some explanation. They must have got everything they could. We do not know whether Green was satisfied of Kristoff's innocence, but Rigney and Charlock were. We cannot help giving weight to the fact that they discharged Kristoff when it would have been the great glory of any of these men to find and convict the culprit in this great disaster. And we might even suggest that the gentlemen of the press doubtless knew everything that the police knew, that many people who knew Kristoff knew that he was arrested and why, that reporters were questioning and hunting, and that any well-intentioned person who knew anything suspicious about Kristoff would have been likely to bring it to the attention of reporters or police authorities. The Black Tom disaster and Kristoff were certainly in the limelight.

The most extraordinary part of Kristoff's story to the police was with respect to the man with the kaleidoscopic name, whom we will for convenience call Grantnor. According to Kristoff, Grantnor met him in the Pennsylvania Station in New York, asked him the time, got to talking, and then and there employed him to take with him a long trip, covering many cities, including cities as far west as Chicago, Kansas City, and St. Louis, staying from one to three days in these various places. He lent Grantnor \$275, for which Grantnor was to pay him \$5,000. He received from Grantnor only a few cents at a time, but at St. Louis Grantnor gave him a dollar to go to the theatre, and when Kristoff came back Grantnor was gone, and Kristoff never saw him again except once when he met him by chance on the street in New York, when Grantnor agreed to get him a job and being in a hurry made an appointment for that night at the McAlpin Hotel, where, strangely enough, he was not to be found when Kristoff went there to get the job. Kristoff knew nothing whatever about what Grantnor did on these trips, except that Grantnor told him he was trying to get contracts. Grantnor had two suitcases which Kristoff said contained plans and blueprints. Kristoff's sole duties were to carry the suitcases and to watch them when Grantnor was not in his room. Kristoff

did not go out with Grantnor in any of these cities, except for a casual ride or two, and did not see any of the people with whom Grantnor talked. He had asked Grantnor for his regular address but never got it. When first employed he was supposed to be paid \$20 per week, but he never got even that.

The story is suspicious enough in all conscience. If Grantnor can be shown to be Hirsch, we can easily get a good deal of truth out of the story and add a good deal of detail. Hirsch himself testifies that he never went further west than Gettysburg.

But the first thing the story shows us is Kristoff himself. There is no danger that the story represents real facts, but it does represent Kristoff. Whether Kristoff was trying to tell the truth and couldn't, or whether he was trying to make up a good-looking lie and couldn't, we get a vivid picture of a simpleton, almost a plain fool, and we know that King is complimenting him when he speaks of him as a man of a low order of intellect.

That is in substance all the direct testimony we have at that time from Kristoff himself. The police had it and did their best with it. Charlock was particularly interested in Grantnor and asked Kristoff to try to find him and let Charlock know. Kristoff is now dead.

In the course of the later investigations of Kristoff we have alleged admissions by him, which are seriously important testimony, whatever doubts we may have regarding them.

These admissions are reported by a detective named Kassman, one of the men of the Burns Detective Agency, which was employed by the Lehigh Valley Railroad Company to shadow Kristoff. From October or November, 1916, to April, 1917, Kassman devoted himself to Kristoff, working in the same factory, getting intimate with him, eating with him, convincing Kristoff that Kassman was an anarchist and so acquiring his confidence, talking to Kristoff about the Black Tom fire and about the possibility of damaging other munition plants, which Kassman professed to be very anxious to do. The evidence shows that Kassman, whether a compatriot or not, could speak some language which Kristoff spoke naturally, and spoke little English himself. We judge therefore that their talk was not in English and that Kassman's reports which in the evidence are in English must be translations of what Kassman reported in the language which he used in talking with Kristoff.

We have not all of Kassman's reports. Why we do not know. We get the impression that the reports we have, which run along from the beginning of his employment to the end with varying intervals between the reports, were selected and put together in the shape submitted to us; not selected for the purpose of submission to us but for some other purpose. Very likely they were so selected because they seemed to the person making the selection to be the only important reports in a long series. Whatever the explanation, the reports as submitted to us omit much that seems important to us. We cannot accept at face value admissions appearing in reports from a detective when other reports from the same detective are lacking, which may conceivably contain denials, or explanations, or sidelights, or statements of fact which are inconsistent with other circumstances which we know or with the alleged admissions.

And Kassman, entirely unconsciously, discredits every admission by Kristoff which appears in his reports. In his affidavit to the Commission stating that the attached are some of his reports and that they are true, Kassman undertakes to state, again in English, what Kristoff admitted to him, and this statement not only changes the language of the admissions in the reports but also changes the substance very materially. Where Kristoff in the alleged admissions speaks of "steamboats" at Black Tom upon which he and his companions set fires, Kassman in his affidavit speaks of "barges". There were no "steamboats"

at Black Tom, but there were "barges". Again, the admissions in the reports speak only of setting fires on "steamboats", and we see no reason to believe that any fires were set on any boats, whether steamboats or barges. Kassman in his affidavit says that Kristoff said not only that a fire was set on a barge, but also that one man set a fire among the cars. The affidavit is made about 10 years later than the reports, but the difference is not forgetfulness. It is the conscious effort of Kassman to say what the immediate necessity seems to him to call for. If the admissions do not fit, he is prepared to make them fit and does his best.

Kassman's reports were in the hands of the Lehigh Valley Railroad Company when the cases against the company, arising out of Black Tom, were tried. So far as we can ascertain, the evidence was not used. We can see reasons for this from the point of view of successful defense, and we are not inclined to attach great weight to this point or to the fact that they urged spontaneous combustion so persistently. The only weight we would give to the last point arises from the impression of sincerity which the language used by the railroad's counsel makes on us. It is somewhat singular that it makes this impression, for we are all used to pleadings and openings and arguments, and in most cases would not get any impression one way or the other from them. But of course there is no estoppel here, and the opinions of counsel in other cases, however sincere, do not establish facts for the cases before us.

Nor were these reports made the basis for any criminal action against Kristoff. This would be of some importance if they had been in the possession of the police, but we can understand that the railroad company or the present claimants would not be particularly interested in punishing Kristoff but might be hoping to supplement whatever evidence Kassman supplied so as to reach whatever influences were behind him.

The language of the confessions is not in itself persuasive of their truth. They sound as do the admissions alleged to have been made in Mexico, more like a reproduction of gossip current in the circles of the man who used the language — whether that man was really Kristoff or whether the language comes from Kassman only and not from Kristoff — than they do like statements of fact made by or quoted from a man who is telling what he himself did. More important still, they do not correspond to the facts and circumstances of the fire. Nor do we like the fact that the language of the admissions is always substantially exactly the same and is very brief, whether it is quoted from Kristoff or (in one instance) from Grossman, who is alleged, after having emphatically told Kristoff in Kassman's presence that he must never under any circumstances say anything about Black Tom, to have told Kassman at a later interview alone just what Kristoff told Kassman and in the same brief, crisp language. We are more than suspicious, we disbelieve, in fact, when Kristoff is alleged to have introduced Kassman to Grossman's favor by telling him that Kassman is an anarchist. Grossman is not an anarchist. The evidence convinces us that he is a respectable citizen. He has been a member of the Republican County Committee in his county for 15 years. Rigney tells us that his father-in-law lived in Grossman's house with him about 10 years and always spoke in the highest terms of him. Grossman is a cautious man. And he is easily scared. We attribute much of the confusion and contradiction in his testimony partly to the fact that he was scared — not because of conscious complicity with a criminal, but by the nature of the occasion — and partly to the fact that he is deaf. We get no unfavorable impression from Grossman's testimony, and we are particularly impressed by the fact that he refused to testify until assured that some representative of the United States Government would be present.

But to return to Kassman. The admission in each case is that Kristoff worked with some German group. Kristoff never naturally used such an expression as "German group". This is Kassman's language; he was employed, as he says, to find Kristoff's connection with some German group, and this is language which he puts in Kristoff's mouth, though of course it may be a substantially accurate transposition of something Kristoff said. Kassman pressed Kristoff for names, and says that Kristoff said he would tell him later, but Kristoff never did.

The omissions in the reports are very remarkable. In substance the reports are composed of anarchists, lunches, and suppers, and brief categorical statements about Kassman's desire to destroy, Kristoff's unwillingness to join Kassman in sabotage because of police, and Kristoff's admissions about Black Tom.

One singular omission is that Kristoff does not congregate with other German agents. The urge to congregate is in all the other testimony the most marked characteristic of all German agents. But we hear nothing of Kristoff's meeting other German agents or even sympathizers. No name appears even of all the various Germans mentioned in our other testimony. And the admissions are brief and rare episodes in a long series of uneventful, common-place stuff. We even doubt whether "anarchists" as used by Kassman really means "anarchists" in any accurate sense.

Another doubt — the most important perhaps — arises from the absence of conversations about Mrs. Rushnak, Mrs. Chapman, about Kristoff's supposed travels in the west, about Grantnor, about Kristoff's alibi, etc. We can feel sure that Kassman was not put on this job without being supplied with all the information the people who employed him already had. His natural approach towards getting information from Kristoff would not be this anarchistic talk and the ridiculously crude, unskillful talk — from the point of view of a man supposed to be a detective — about munitions and about Black Tom itself. He would naturally begin on Kristoff with talk about the west, the cities where Kristoff told the police he had been, to see if Kristoff really knew about the cities and said anything about the trip, whom he was with, what he did. After Kristoff began talking about his arrest by the police, Kassman would have a perfect opening for talking over the whole story, the trip, Grantnor, whom Kristoff and Grantnor saw on the trip, Mrs. Rushnak, Mrs. Chapman, the alibi, what he really did the night of the fire, whether he was excited when he got home and why, and the "What I do". It is inconceivable that Kassman did not go into all these subjects with Kristoff in the course of the six months he followed him up. Either Kassman was a fool, or he had those talks and made reports about them which we have not got. If he got so intimate with Kristoff as to get confessions about Black Tom, he would have found no difficulty in getting Kristoff to talk over his whole story to the police. Kristoff would have been rather proud that he got away from the police, would have enjoyed his cleverness in producing a story from which they could make nothing, would have talked freely about Rigney, King, Charlock, and Green, who had examined him and tried to get him to confess. We hear nothing about any of these things.

Kristoff's experience with detectives was not at an end, even when Kassman was taken off his track. In 1921 he was arrested in Albany and while in jail there another detective was placed with him in the guise of a prisoner and attempted to gain his confidence and secure admissions. Nothing came of this. At the same time he was examined with great thoroughness by counsel for the Lehigh Valley and by others. Kristoff seems to have professed willingness to help them in every way, probably with the idea of thereby securing his

release from jail, but we get nothing whatever except that he was ready, he could be taken to Philadelphia, to point out a house which he thought was used as a rendezvous by German agents. The court granted an order for his removal from jail under guard to visit Philadelphia, but we do not even learn that they took him there. They did at least take him to New York where he was confronted with Mrs. Rushnak and Mrs. Chapman, and a strenuous effort was made by all concerned to get him to admit Black Tom. He denied all connection with Black Tom. It also appears in close connection with this story that Mrs. Rushnak was in 1918 under surveillance of a woman detective in the guise of a lodger in her house. This was evidently done for the purpose of securing evidence from Mrs. Rushnak that Kristoff came home late the night of the fire. It seems singular that this should have been necessary, but doubtless Mrs. Rushnak had in the interval between 1916 and 1918 denied this story. The woman detective did report that Mrs. Rushnak finally admitted to her that Kristoff came home late, but she insisted at the same time that Kristoff not infrequently came home late, and that he was absolutely innocent, and added that she had merely made it easier for him to secure his release from the police in 1916 by denying that he came home late.

Apart from Kristoff's supposed statement that he worked in some unidentified German group, we have no connection of Kristoff with Germans except his possible connection with Hinsch. His group statement certainly is not enough for us. We have to be convinced that Hinsch was Grantnor or Grantsor or Graentnor in order to get a good start on the idea that Hinsch through Kristoff was responsible for Black Tom. His Grantsor story must be connected up with Hinsch. In his own evidence there is no such connection except his meeting Grantnor later in New York when Grantnor told Kristoff he could find him at the McAlpin Hotel. This is where German agents sometimes roomed, and it is argued that this statement connected him with Hinsch. But it seems hardly likely that Hinsch would have mentioned the McAlpin if he was trying to get rid of Kristoff. He would have given him some fictitious address or some address which had no relation to Germans.

The only evidence worth considering that Hinsch was Grantnor is the evidence that Hinsch called himself Grantnor. This comes from Herrmann and Hadler. It seems possible, but we regard the evidence of Herrmann as wholly unreliable.

When Herrmann appeared before the American and German Agents at Washington he told the Agents that he could not remember any Grantsor or Gransor. This was on his arrival from Chile after he had decided to testify in behalf of the claimants, but before his formal examination. He was then asked to write out his own story which he did that night, and in this story he speaks of Hinsch calling himself Grantnor, and corroborates it by relating that as a joke Hinsch called him Rodriguez just after the Kingsland fire, and that he retorted by calling Hinsch Grantnor. In his cross-examination about his complete failure to remember Grantnor or Grantsor at first, it seems plainly apparent that he had been reminded of Grantnor in conversation after his failure to remember, and also that the question of Grantnor had been the subject of discussion on his journey from Chile. Grantnor, as we have said, is the missing link in this part of the story, and this failure of Herrmann to remember the name at all is a stumbling block to believing what he later says on this point.

Herrmann also was very doubtful about the spelling of the name. He tries twice to spell it and each time gives alternatives, Grantnor and Graentnor, though no German could think that the name, if pronounced in English fashion, could possibly be spelled Graentnor.

Herrmann also says he had heard Hilken call Hinsch Grantnor, but Hilken, one thing to his credit, does not even testify that Hinsch used the name Grantnor, and Hilken knew Hinsch better than anyone else. Hilken even testifies that he never heard of Grantnor.

Hadler's testimony as a whole is unconvincing. If he had told only about Hinsch's claims in Mexico to credit for Black Tom and Kingsland we would be more inclined to believe him. But his identification of Wozniak is nonsense in itself, and particularly so as we think that Wozniak never was in Mexico. And we take no stock in his story of the frequent repetition of the Rodriguez-Grantnor joke. It would not have been a joke at all in Mexico for there seems to be no doubt that Herrmann called himself Rodriguez there. But the most convincing point about this evidence by Hadler is that this joke, if it ever happened, was first made in the United States immediately after the Kingsland fire. We do not believe that both Herrmann and Hinsch were so lacking in humor that they continued to work this joke after they got to Mexico, and in the presence of such a person as Hadler. It is the kind of joke that they would keep for their own amusement, even if one can imagine that it continued to amuse them. Hadler carried this joke too far.

One is rather inclined to regard Hinsch's story that he gave up sabotage when he took over the *Deutschland* work as quite likely to be true. He may not have done this at once, but it seems more than likely that he would not while the *Deutschland* was at Baltimore have been active in sabotage. We do not regard the question whether Hinsch was absent from Baltimore during the two days before Black Tom as important in itself. He did not need to be absent, if they had been planning Black Tom for some time. Its importance relates only to Hinsch's credibility, and it does not have much importance from this point of view. It has some bearing on the credibility of other witnesses also. Our impression is that Hinsch was not absent from Baltimore at this time.

The fact that Hinsch let Herrmann stay around Baltimore, and that Herrmann probably did some things or talked of some things in connection with sabotage at this time, and the talk about the pencils which Herrmann seems to have had with him at this time, tends against Hinsch's claim that he cut loose from sabotage. We would guess that Herrmann was not really doing much but talk and plan, and that Herrmann himself, particularly when the *Deutschland* was there, was doing nothing but work about her. And it is of course conceivable that we are wrong in disbelieving Marguerre's evidence that Herrmann was to take no action against munition plants or American property unless the United States entered the war. We do not believe that Hinsch would have mixed up sabotage so closely with the *Deutschland*, either by taking part in it himself or by letting Herrmann work on the *Deutschland* if Herrmann was then active in sabotage.

In certain cases an accumulation of items, each in itself too doubtful to be relied upon but all leading in the same direction, results in reasonable certainty. The evidence of fact in this case has pointed in a number of different directions, but even when some special part of the evidence has pointed in some one direction it has failed to carry conviction. The Kristoff evidence with which we have dealt comes the nearest to leading somewhere.

We cannot be sure that Kristoff did not set fire to Black Tom or take some part in so doing. We cannot be sure that Graentsor, or Grantnor, or Graentnor was not Hinsch, and that Hinsch did not employ Kristoff and others who are unknown. But it will sufficiently appear from the foregoing that, as we have said, the evidence falls far short of enabling us to reach the point, not merely

of holding Germany responsible for the fire, but of thinking that her agents must have been the cause, even though the proof is lacking.

Done at Hamburg October 16, 1930.

Roland W. BOYDEN
Umpire

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

[Extract from the Minutes of the Meeting of the Commission held on January 9, 1931]

The American Commissioner instructed the Joint Secretaries to record in the minutes of this meeting (the first held since October 20, 1930) that the Commission had rendered its decision dismissing the claims of the United States of America on behalf of the Lehigh Valley Railroad Company, Agency of Canadian Car and Foundry Company, Limited, and Various Underwriters, Docket Nos. 8103, 8117, et al., against Germany, which had been finally submitted by the American and German Agents on September 30, 1930, after oral arguments at The Hague, that the said decision, dated at Hamburg, October 16, 1930, and signed by the Umpire, the American Commissioner, and the German Commissioner had been, by prearrangement of the National Commissioners, simultaneously communicated on November 13, 1930, in duplicate originals to the Government of the United States and the Government of Germany, and had been made public by the two Governments, at Washington and Berlin respectively, on November 14, 1930, and that a third signed copy had been filed in the records of the Commission on November 15, 1930.

LEHIGH VALLEY RAILROAD COMPANY, AGENCY OF CANADIAN
CAR AND FOUNDRY COMPANY, LIMITED, AND VARIOUS
UNDERWRITERS (UNITED STATES) *v.* GERMANY

(*Sabotage Cases, March 30, 1931, pp. 995-997.*)

PROCEDURE: REHEARING AFTER FINAL JUDGMENT, NEW EVIDENCE, FINAL DATE FOR FURTHER PETITIONS. — IRREGULAR RENDERING OF DECISION: DELIBERATIONS, ROLE OF UMPIRE, COMMISSION'S PRACTICE. Requests filed January 12 and 22, 1931, for rehearing after final judgment of October 16, 1930. *Held* that final judgment not irregularly rendered because of Umpire's participation in National Commissioners' deliberations and in opinion of Commission: usual practice in important cases since Commission's foundation. Reference made to decision of April 21, 1930, in Philadelphia-Girard National Bank case, p. 69 *supra*, with regard to new evidence in sabotage cases to be submitted in future supplementary petitions for rehearing. Final date set for submission of any further matter.

EVIDENCE, PROCEDURE: AFFIRMATIVE PROOF, PRIMA FACIE CASE, PRESUMPTIONS, WITNESSES, SUBPOENA, OATH, ORAL TESTIMONY. — JURISDICTION: EXTENSION BY (MUNICIPAL) STATUTE. *Held* that (1) Treaty of Berlin requires