respect the terms of the Hellenic-American Treaty of Extradition, there has arisen an issue that requires adjustment. It is suggested that the alleged breach of the treaty appropriately calls for adjudication before an international forum. From an American point of view, it would be desirable to submit to the Permanent Court of Arbitration at The Hague, under the existing Arbitration Treaty between the United States and Greece, of June 19, 1930, the question whether Greece has been guilty of a breach of the Treaty of Extradition. The conclusion of that tribunal on that question would be helpful to the cause of extradition. The protest of an aggrieved state, such as the United States, however valid, needs support and vindication in an international forum to which the contracting states have agreed to have recourse.

CHARLES CHENEY HYDE

THE GOLD CLAUSE IN INTERNATIONAL LOANS

Huge amounts of external funded obligations, both public and private, issued in many countries and now outstanding, contain clauses for the payment of principal and interest in gold or in gold coin. For this reason the decision rendered in the House of Lords on December 15, 1933, in the case of Feist *v.* Société Intercommunale Belge d'Électricité,[1] is of international importance. No serious question of the conflict of laws was involved because the bonds under construction were by their own terms to be "construed and the rights of the parties regulated according to the law of England and as a contract made and according to the terms thereof to be performed in England." The circumstances of issue confirmed the rule of construction because the bonds were floated in England by an English firm, designated as fiscal agent of the obligor, and payable, principal and interest, at the office of such agent in London. The defendant, a Belgian company, promised to pay the principal in sterling in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on the first day of September, 1928. The interest was payable in the same medium at 5½ per cent. by equal half-yearly payments. In September, 1928, when the bonds were issued, the Gold Standard Act, 1925, had exempted the Bank of England from obligation to pay its own notes in gold coin but they still remained legal tender, and currency notes were not redeemable in gold coin. The Currency and Bank Note Act, 1928, had been passed, though it did not go into effect until November 22, of that year. By these laws, gold coin was substantially withdrawn from circulation. Furthermore, the literal interpretation of the gold clause would have required that the coins tendered would all have to be of the exact standard of weight and fineness specified in the Coinage Act of 1870, and the interest provided by the separate coupons would have had to be paid in gold coin of a denomination which did not and never did exist in the United Kingdom.

[1] Reprinted in this JOURNAL, *infra*, p. 374.

It was the impossibility of literal compliance with these clauses which induced both the Chancery Division at *nisi prius* and the Court of Appeal to decide that the bonds could be discharged by the payment of the stipulated amount in any sterling currency which for the time being was legal tender for the amount due, thus treating the bonds as though the gold clause were excluded. In the House of Lords, however, Lord Russell of Killowen, in an opinion concurred in by all the other sitting judges, determined that the gold clause was inserted in contemplation of the very contingency of the country going off the gold standard at some future date, as in fact it did in 1931; "for the parties must have inserted these special words for some special purpose, and if that purpose can be discerned by legitimate means, effect should be given to it." Accordingly, the court construed the gold clause not as constituting the mode of payment but as describing and measuring the company's obligation. In arriving at this result, the House of Lords, sitting as a national court of final resort, adopted the reasoning of the Permanent Court of International Justice in the so-called Gold Clause Cases of France against Brazil and the Kingdom of the Serbs, Croats and Slovenes, respectively. While in no sense binding upon the court, the reasoning of the Hague Court was recognized as stating happily and succinctly the considerations and principles which influenced the conclusion reached. In the last named case, the Hague Court said: "The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe but to destroy it." [2]

The refusal of the Court of Appeal of England to enforce the gold clause because of impossibility of performance was not without its influence in certain courts of the United States. This was the view adopted by Mr. Justice Ingraham in Irving Trust Co. *v.* Hazelwood.[3] The court distinguished Bronson *v.* Rodes,[4] a case decided in the Supreme Court during the period of the suspension of specie payment after the Civil War, pointing out that at that time two varieties of money, gold and paper, were in general circulation. In 1933, however, gold coin and gold certificates were withdrawn from circulation by presidential proclamation, and the clause, literally construed, would have been substantially impossible of performance.

Since the Joint Resolution of Congress of June 5, 1933, the question of the judicial interpretation to be given to the gold clause becomes academic, at least to the extent that such legislation is determined to be valid and applicable. By this resolution, Congress declared that "every provision contained in or made with respect to any obligation which purports to give the obligee a right to require repayment in gold or a particular kind of coin or

[2] Publications of the Permanent Court of International Justice. Case of the Serbian Loans, Judgment No. 14, at p. 32.

[3] (1933) 265 N. Y. Supp. 57; 148 Misc. 456. "At the present time there is but one lawful medium of exchange, and this has the same coin value as gold of equal amount." *Ibid.* at p. 58. No appeal was taken.

[4] (1869) 7 Wall. 229. See opinion by Chase, C. J., especially at p. 250.

currency, or in an amount of money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred." Every obligation payable in money of the United States "shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts." [5]

The constitutionality of this legislation is, of course, a question of momentous importance upon which we do not here assume to enter.[6] If it be held constitutional, many problems of an international character will inevitably arise. The legislation is by its terms applicable to any of the public debt which contains provision for payment in gold or gold coin, as well as to obligations of similar import of a private character. Many obligations of both categories are held abroad by citizens of foreign countries, or by institutions constituting the fiscus of a foreign government, such as its treasury or its national bank. An example of direct government obligation containing the gold clause is represented by the treaty of 1903 with the Republic of Panama, under which the initial and annual payments to be made for cession of the rights in the Canal Zone are stipulated to be made in gold coin of the United States (Art. XIV). A claim for the specific performance of this treaty has been recently lodged by the Government of Panama.

Aside from an obligation running directly from one government to another, an international claim may arise through the espousal by one government of the cause of its nationals against another government obligated under a gold clause. The attempt of the obligor to nullify its obligation by an *ex parte* interpretation of the clause, or by making its performance impossible or unlawful by statute, may well constitute a denial of justice after all local remedies have been exhausted. In the Gold Clause cases before the Permanent Court, the French Government intervened in behalf of a group of French banks because of the interpretation sought to be given to the clause by the obligor governments. The court recognized the claim as being distinct from those of the French nationals, though fundamentally based upon the same state of facts. It is true the cases were submitted under voluntary special agreements, but the court decided that the claims held originally by individuals gave rise to a proper international dispute between states, which the court was competent to adjudicate, though relating to municipal law and questions of fact.[7]

Owing to the present status of the external debt of many countries, there will inevitably be a balancing of claims under the gold clause. Most of the outstanding securities of the United States Government embody the gold

[5] (1933) 48 U. S. Stat. L. 112. Pub. Resolution, No. 10, 73rd Congress.

[6] *Cf.* George A. King, in 2 George Washington Law Rev., 1934, p. 131; Phanor J. Eder, in 19 Cornell Law Quarterly, Dec. 1933, p. 1.

[7] Case of the Serbian Loans, Judgment No. 14, p. 19; Case of the Brazilian Loans Judgment No. 15, p. 101. A similar ruling was made in the Mavrommatis Case, Judgment No. 2, p. 12.

clause. They are not external loans, however. The inclusion of the clause was required by the Act of February 4, 1910. On the other hand, most of the war-debt funding agreements made by the United States provide for payment either in United States bonds or "in United States gold coin of the present standard of weight and fineness." The agreement with Great Britain permits payment in equivalent gold bullion. Congress endeavored to be fair in declaring the enforcement of the gold clause to be against public policy inasmuch as the joint resolution includes all obligations *of* as well as *to* the United States (excepting currency). But its terms are also broad enough to cover obligations of foreign governments held by American nationals. Many of these loans issued since the World War contain the gold clause. Whether or not obligations of the last named category are affected by the joint resolution under the ordinary principles of the conflict of laws, it is manifest that the Department of State would not now espouse the rights of private holders to the extent of endeavoring to enforce payment under the gold clause.

The recent decision of the House of Lords in the case of the Belgian company, the authority of the Gold Clause cases in the Permanent Court, and the indications of the United States Supreme Court given during the period of the Legal Tender Acts [8] all tend toward removing the element of controversial construction from the gold clause and placing it, so far as possible international claims are concerned, upon a frankly more realistic basis. If security as to the medium of payment, or its equivalent measured by some reasonable standard, cannot be assured through proper clauses against attack by action of the borrowing government, the placement of international loans with private investors will have become extremely difficult, even as to governments concerning whose financial stability at the moment there may be no question.

ARTHUR K. KUHN

THE NEW DEAL IN INTERVENTION

On September 11, 1933, Secretary of State Cordell Hull declared:

> The chief concern of the Government of the United States is as it has been that Cuba solve her own political problems in accordance with the desires of the Cuban people themselves. . . . Our government is prepared to welcome any government representing the will of the people of the Republic and capable of maintaining law and order throughout the island. Such a government would be competent to carry out the functions and obligations incumbent upon any stable government. This has been the exact attitude of the United States Government from the beginning.[1]

[8] See besides the case of Bronson *v.* Rodes cited *supra*, Trebilock *v.* Wilson (1871), 12 Wall. 687 at p. 697; Butler *v.* Horwitz (1869), 7 Wall. 258; Gregory *v.* Morris (1878), 96 U. S. 619 at p. 625.

[1] Press Releases, Dept. of State, Weekly Issue No. 207, p. 152.