

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
Washington, D.C.

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In the Matter of the Claim of

JOHN HESSE,  
152 West 84th Street,  
New York, New York.

Under the Yugoslav Claims Agreement  
of 1948 and the International Claims  
Settlement Act of 1949

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Docket No. Y-644

Decision No. 1361

Counsel for Claimant:

FRANZ GOLDNER,  
175 Fifth Avenue,  
New York 10, New York.

and

WILLIAM J. HASSAN,  
1400 N. Courthouse Road,  
Arlington, Virginia.

*afforded  
to  
12-15-54*

FINAL DECISION

A Proposed Decision was entered on October 15, 1954, denying this claim for the reason that claimant had not sustained the burden of proof by showing that he owned an indirect interest through Fallersa of property which was taken by the Government of Yugoslavia. Subsequent to the issuance of the Proposed Decision, the claimant, through his attorneys, filed objections, with accompanying brief, and requested a hearing.

While it will not be necessary to deal with all of claimant's objections to the Proposed Decision, in view of the hearing which was afforded him, we note that his first objection was because "it is known to your claimant that an agent of the Commission was still conducting an active investigation in Trieste, Italy, on

*Rgm  
Jmm*

"October 14, 1954, the day prior to the mailing of the referred to proposed decision." In the brief accompanying the objections, claimant states that our investigator on October 14, 1954, "spent more than an hour with Alberto Hesse in Trieste, Italy and is also known to have interviewed a lawyer named Battistella, and an engineer Baldi."

The objection seems to assume that any evidence secured by our investigator would favor the claimant. If this were true, it would, of course, be considered before a Final Decision was issued in this matter. In order that claimant may be fully apprised of what our investigator has reported with respect to these interviews we shall set it out fully, in view of his objections:

"Mr. Adalberto Hesse, brother of the claimant, was interviewed in his office at Piazza Tommaseo No. 1 in Trieste. He declared that the claimant's holdings in Fallersa were correctly stated in the claim as 5,300 shares of stock worth 2,650,000 lire and advances to the corporation representing future issues of stock worth 6,988,000 lire. He admitted that he had never had any written agreement with his brother but stated that they were such a close family that no arrangement of that sort was necessary between them. He said that he had always managed the local affairs of his brother and that he had advocated the investment of funds in Fallersa as well as the investment in reconstruction after the damage sustained by bombing. He declared that the Windisch-Graetz family had opposed the reconstruction program, but that he considered it a profitable venture since the new plant would be the only one of its type in this part of the world and could easily pay 100% of the total investment in one year. He was unable to produce any documents or records to prove any correspondence or understanding or exchange of information with his brother.

"It would appear to be significant that none of the other interested parties in the enterprise, as Baldi and Battistella, ever heard of the claimant and his supposed interest until 1951. It is certainly worth noting that Baldi believed the claim of John Hesse to be without foundation and that Battistella never heard of the claimant until Adalberto Hesse outlined certain documents that he needed in an informal note dated December 6, 1951."

The Battistella referred to, is the Vice-President and legal director of Fallersa, whose affidavits have been filed by claimant and were

described in the Proposed Decision. Baldi was an organizer and Managing Director of Fallersa and accompanied Alberto Hesse to the Fallersa premises in May 1945 for the purpose of rehabilitating the plant.

At the hearing, Alberto Hesse testified that during the life of his father, Franz Hesse, the latter distributed his estate equally among his 8 children, but that he, Alberto, renounced his share in favor of his two sisters. He further testified that toward the end of 1928, or the beginning of 1929, his father gave claimant his share in the estate, while claimant was on a visit to Trieste, and that claimant asked him to administer and invest his share of the legacy, since it was not possible under Italian law to transfer currency or estate abroad. This conversation and arrangement in 1929 were corroborated by claimant, who testified that he relied upon Alberto, since he, the claimant, was not a businessman and knew little about the handling of money. Claimant also filed evidence that from 1926 investments of foreigners were subject to Government authorization.

We are persuaded that claimant has shown that an arrangement was entered into in 1929 under which Alberto was to invest claimant's share of his father's estate. We conclude, however, that claimant has failed to establish that such funds were all or a part of the 9,638,000 lire Alberto used to buy the 5,300 shares of Fallersa and the advances to Fallersa from 1939 to 1946.

Not a single document has been submitted contemporary with any date from 1929 to October 1948 corroborating the alleged beneficial ownership. Claimant himself had no knowledge of the purchase of shares whatsoever until 1948, when Alberto evidently informs him that he has made him a fortune without his knowledge.

Alberto testified he could not notify him because of censorship. He testified that he could not mention who the real owner of the stock

was because "up until 1951 we were under censorship. Trieste was under censorship. The rest of Italy was under censorship earlier; only Free Territory of Trieste was still under censorship." But such censorship manifestly did not daunt him from asserting claimant as the beneficial owner of the stock prior to 1951, but -- we note -- apparently subsequent to the signing of the Claims Agreement between the United States and Yugoslavia. Thus in a letter of October 18, 1948, E. Paul Yaselli, President of an American Corporation which purchased the majority interest in Fallersa in 1945, speaks of a letter of October 9, 1948, from Guido Sadar in which reference is made to "Mr. Hesse's claim in that the money invested belonged to his brother, who is an American citizen." Nor did censorship prior to 1951 prevent Alberto from notifying claimant of the transaction. Thus we note that claimant filed an affidavit dated February 8, 1949, with the Department of State asserting ownership of the stock interest in Fallersa. Alberto candidly testified as to how he evaded censorship, as follows:

"Q Did there come a time when you discussed by mail this investment with your brother, John?

"A I asked John to find a lawyer in New York to take over his affairs as soon as I had a chance to do so. I believe I have mailed a letter in Venice in order to avoid the Trieste censorship." (transcript, p. 42)

He also testified that he had copies of the letters at home, but, although given an opportunity to file them subsequent to the hearing, claimant has not done so.

We are aware that Alberto testified that censorship prevailed in Italy prior to 1951. But we do not find his testimony credible that in 1945 because of censorship and fear he neither notified anyone of his brother's alleged interest in the shares nor had them transferred

in his brother's name. That there was no real impediment to such notification and transfer, is shown by the claims of the American-European Agencies, Inc. (Docket Nos. Y-644 and Y-1578), in which the evidence shows that that claimant, an American corporation, received permission from the Italian Ministry of Treasury for the purchase of shares of Fallersa in September 1945 and of another corporation in July 1945. In his affidavit of December 31, 1951, referred to in the Proposed Decision, Alberto swears that it appeared to him senseless in April 1945 to apply for such authorization. But the point is he never applied for such authorization at any time nor evinced any interest in an affirmative act consistent with his position that he has for almost 15 years been the mere nominee for his brother.

There is evidence, in the form of affidavits, that Alberto told his son, sister and Vladimiro Dougan that he invested claimant's funds in Fallersa. But these affidavits are manifestly insufficient to prove that what Dougan refers to as claimant's "whole capital" and what his sister refers to as his "fortune" were the equivalent of the 9,638,000 lire investment. If, as may be the case, claimant's funds are a part of this 9,638,000 lire, there has been no showing as to what part.

And this brings us to the confusion surrounding the amount of the legacy, and claimant testified that he has never had an accounting or a statement of the worth of his inheritance.

Twice at the hearing Alberto referred to the amount of the legacy owned by claimant as being about 12 million lire. (transcript pp. 29 and 55) Since he had a one-eighth share, the total amount of the father's estate would be about 96 million lire. In 1938 the rate of exchange was 19.01 lire to one dollar (see Board of Governors of the Federal Reserve System, Banking and Monetary Statistics (1943) p. 682; see also Statistical Year Book of the League of Nations, *ibid*, p. 185).

At the 1938 rate of exchange, therefore, the estate of claimant's father would be worth approximately \$4,800,000 and the share of each child approximately \$600,000. Yet Alberto testified that his father had a managerial position in a bank and retired on a pension and that his sister, Guglielmina, was a teacher of French in a lyceum (high school). At another point, however, Alberto testified that the value of his father's estate in 1928-1929 was only "several millions of lire." (transcript, p. 53).

The credibility of the claimant himself is not questioned. Unfortunately, however, he could not testify with respect to the basic issues in this case -- the beneficial ownership of stock in himself -- because he had no personal knowledge of the alleged transactions by which it was accomplished. This claim must stand or fall on the testimony of Alberto Hesse. We find his testimony inconsistent, vague, generally incredible, and unsupported on any basic point by a single contemporary document. In our Proposed Decision we pointed out that the evidence in support of a claim of this nature and magnitude must be of exemplary quality. That standard is signally lacking here.

For the foregoing reasons, the claim is, and must be, denied.

Dated at Washington, D. C. DEC 1-5 1954

FOREIGN CLAIMS SETTLEMENT COMMISSION  
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the following:

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Counsel for Claimant:

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175 Fifth Avenue,  
New York 10, New York.

and

WILLIAM J. HASSAN,  
1400 N. Courthouse Road,  
Arlington, Virginia.

GLC.  
10/14/54

no  
2/2/54  
Oct 13, 1954

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$790,779.06 by John Hesse, a citizen of the United States since his naturalization on October 4, 1922, and is for the nationalization by the Government of Yugoslavia of a plant for the manufacture of plastic wood slabs located at Villa del Nevoso (Ilirska Bistrica), Yugoslavia, and owned by Fallersa, S.A., an Italian corporation with its siege social in Trieste, and in which claimant alleges he is a stockholder of shares issued and to be issued for advances made.

The claimant alleges that in 1940 he acquired 5,300 shares of stock in Fallersa for a consideration of 2,650,000 lire and also acquired the right to have 13,976 shares issued to him at a later time in consideration of advances made to Fallersa between March 21, 1941 and February 24, 1945, in the amount of 6,988,000 lire.

R. J.

As evidence of his ownership of the stock, claimant has filed the following:

1. (a) An affidavit executed on May 5, 1951 by claimant's brother Adalberto (Alberto) Hesse. The affiant stated that in April 1929 he and claimant, the heir presumptive, orally agreed that in the event of their father's decease the affiant was to be entrusted with administering, investing and managing claimant's future interests and hold claimant's property in his name for claimant and exert all incidents of ownership with full discretion in its management and control; that the reasons for the agreement were that claimant was not familiar with Italian customs of investment management and property and, further, that under Italian law only Italian citizens could own, administer, manage, and control factory property without interference by governmental authorities; that the agreement was oral and not in writing to avoid estate proceedings and taxes and that their father died in 1938 and that affiant took over the management, investment, and control of all funds due claimant; that the affiant then decided to invest these funds in Fallersa whose share capital was 20,000 shares of 500 lire each of which claimant took over 5,300 shares in the name of affiant for a consideration of 2,650,000 lire with the exception of 10 shares each in the names of affiant's son Alberto Hesse, Paolo Debellich, and Guido Sadar; that the affiant on behalf of claimant advanced monies aggregating 6,988,000 lire from 1939 until 1946 and that for these advances additional stock was to be issued by Fallersa to the claimant as the equitable owner.



- (b) An affidavit executed on December 31, 1951 by Adalberto (Alberto) Hesse. The affiant stated that he invested liquid assets in Fallersa in his own name and not in that of John W. Hesse because Italian law did not permit investments by foreign citizens without special authorization; that he did not present an application for such authorization, "because it was possible to have a refusal" from the Fascist authorities in 1940, since claimant was a United States citizen and "being the U.S.A., in war against Italy" and because the affiant risked having sanctions and penalties against him and seeing the assets he was administering sequestered as belonging to an "enemy"; that it appeared to him senseless at the end of the war in April 1945 to go into further expense to apply for authorization to have claimant instead of himself registered as owner since it seemed that the total investment was lost since the factory was damaged by bombs, and the territory was occupied by Yugoslav troops, and Yugoslav authorities had taken control of the factory.
2. By an affidavit executed on May 5, 1951, by Alberto Hesse, Jr., the affiant swears that in 1940 his father, Adalberto Hesse, told him of the transaction of April 1929 with the claimant and that the affiant has knowledge from the books of Fallersa that its capital was 20,000 shares of 500 lire each of which claimant took over 5,300 shares in the name of affiant's father for 2,650,000 lire except for 30 shares, 10 of which were in the affiant's name, and that claimant knows from the company's books that his father advanced monies aggregating

- 6,988,000 lire from 1939 to 1946 for additional stock to be issued by Fallersa to claimant as equitable owner.
3. An affidavit executed on April 9, 1952, by Vladimiro Dougan. The affiant states that he was present during a discussion in the spring of 1929 between claimant and Adalberto Hesse, at which Mr. and Mrs. Hesse and Miss Guglielmina Hesse, the oldest daughter, were also present; that the claimant and Adalberto Hesse agreed that the latter would continue to take care of claimant's interests; that Adalberto Hesse expressed concern to the affiant during the war because he had invested the "whole capital" of claimant in Fallersa, which was located in an area occupied by German troops, but which was frequently disturbed by Yugoslav partisan actions; that because of this Adalberto Hesse decided in May and June 1945 when the war was over to go to Villa de Nevoso to save claimant's and the company's interests and help organize the repair and completion of the company at some risk to himself.
  4. An affidavit executed on April 9, 1952 by Guglielmina Hesse, claimant's sister. The affiant states that in the spring of 1929 she was present at a discussion between claimant and Adalberto Hesse at which Mr. Vladimiro Dougan was also present, and that it was there agreed between claimant and Adalberto Hesse that the latter would administer claimant's fortune; that no written agreement was made because it was against Italian law; that she knows Adalberto Hesse invested claimant's fortune in Fallersa.
  5. (a) A certificate dated December 4, 1950, executed by Silvio Battistella, Vice-President and legal representative of Fallersa, who attests that of the 20,000 shares of 500 lire each forming the company's capital, the following numbers are registered in the names of the persons named below:

Alberto Hesse	5,270 shares
Alberto Hesse, Jr.	10 "
Paolo Debellich	10 "
Guido Sadar	10 "

and that Alberto Hesse contributed 6,988,000 lire to the "projected increase of the company's capital from lires ten millions to lires thirty millions, decided during 1944 and not completed, due to World War II; the total sum paid corresponds to thirteen thousand nine hundred seventy six new shares to be still emitted."

- (b) A declaration executed on January 2, 1952, by Silvio Battistella, Vice-President and legal representative of Fallersa. The affiant states that according to Art. 5 of the "legal status" (charter) of the company its capital could be increased at any time up to 30,000,000 lire by approval of the Board of Directors; that the Board by virtue thereof took up from stockholders by subsequent funds (20,000,000 lire) to increase the capital from 10,000,000 lire to 30,000,000 lire; that after payments had been effected by stockholders the Board of Directors decided on February 21, 1945 to present application to the authorities for the permit required by the law of July 11, 1942 for increasing the company's capital; that this authorization was granted by German occupation authorities in Trieste in April 1945; that as a result of the war the factory was a total loss, "so that it has been practically impossible to formally bring to perfect execution the operation of increasing the company's capital, which on the other hand was already substantially performed"; that in consequence of "advances" made in the amount of 6,988,000 lire, Adalberto Hesse has "a further investment in the

company for 13,976 shares of the face values of  
Lire 500.00 each."

- (c) A document issued by German occupation authorities on April 26, 1945 in Trieste, granting permission for an increase in Fallersa share capital from 10 to 30 million lire.
- (d) An affidavit executed on February 11, 1952 by Silvio Battistella, Vice-President and legal representative of Fallersa, corroborating the issuance of 5,270 shares in the name of Adalberto Hesse and 10 each in the names of Guido Sadar, Alberto Hesse, Jr. and Paolo Debellich; that against the increased capital to 30,000,000 lire, a further 40,000 shares of the face value of 500 lire each were to be issued, of which 13,976 should have been registered in the name of Adalberto Hesse; that the percentages of the company's capital "belonging" to Adalberto Hesse, Guido Sadar, Alberto Hesse, Jr. and Paolo Debellich were 26.50% against the capital of 10,000,000 lire, 39.94% against the advances paid of 6,988,000 lire, and 32.13% against the increased capital of 30,000,000 lire.
- (e) An affidavit executed on April 9, 1954 by the above-named Silvio Battistella, who repeats his former statements regarding the increase in share capital and states "that above-mentioned capital has not been increased and shares not been issued in consequence of the war events."
- (f) An affidavit executed on January 2, 1952 by Silvio Battistella, Vice-President and legal representative of Fallersa. The affiant states that according to Italian Law No. 807 of July 24, 1942, valid from that

date to May 23, 1950 and from that date to the present according to Order No. 104 of May 23, 1950, of the Allied Military Government of the United States and British Zone of the Free Territory of Trieste, foreign citizens could not have interests in Italy and cannot now have interests in Trieste invested in commercial and industrial enterprises, without having a preliminary authorization of the Government.

6. An affidavit executed on April 9, 1952 by Guido Sadar. The affiant states that he is a counsellor at law (avvocato) duly registered in the rolls of Trieste's Counsellors at Law; that it is the local custom to found a corporation through a small group of persons and with small capital which later on will be increased by resolution of the shareholders; that due to the danger of inflation a Law of April 7, 1942 (No. 322 R.D.L.) provided that each increase of capital needed the consent of the Ministries of Finance and Corporations; that for this reason if a corporation expanded and needed money and wanted an increase in its capital, it demanded "advances" of the shareholders "which were to be reduced to shares immediately after the consent was obtained."

7. A receipt dated March 16, 1929, in Trieste issued by the Public Security Authority showing it had received from claimant a "declaration of sojourn" in Italy for three months.

Certain of the above affidavits will be analyzed in detail subsequently.

Claimant has also filed photostatic copies with verified translations of two letters addressed to him dated February 3, 1937, and March 7, 1939, from the Union Bank of Switzerland in Zurich remitting \$200 and \$100, respectively, "by order and for the account of Mr. Alberto Hesse, Trieste." In addition, he has filed two bank

statements from that bank in the name of Mr. John W. Hesse; c/o Mr. Alberto Hesse; P. O. Box 396, Trieste." In a statement as of June 30, 1942, the balance at the beginning of the period, December 31, 1941 is \$18,628.80, and the balance as of June 30, 1942, is \$18,609.80. In another statement as of December 31, 1942, the balance at the beginning of the period is 31,719 francs and the balance as of December 31, 1942 is 34,062 francs. There is a deposit of 2,159.40 francs designated "payment to Alberto Hesse" and a deposit of 219.60 francs designated "remittance."

We are not persuaded that claimant had an ownership interest in Fallersa based on his alleged right to have 13,976 shares issued to him in consideration of advances made to the company in the amount of 6,988,000 lire. As this decision is based solely on whether the claimant owned the property, we need not decide this question.

To prove his beneficial ownership of the stock, claimant has relied entirely on affidavits, because the agreement in 1929 was oral, for the reasons alleged above. These affidavits, other than his own, are by his brother, his sister, his nephew and Vladimiro Dougan, the latter apparently not a member of the family.

In the affidavit of Alberto Hesse of May 5, 1951, he swears as follows:

"12. That when our father Franz Hesse died in the year 1938 pursuant to this agreement made in the year 1929, as above described, your deponent took over the management, investment and control of all funds due to said claimant John W. Hesse.

"13. That your deponent then and there decided to invest these funds in the F.A.L.L.E.R.S.A., S.A., a corporation duly organized under the laws of Italy."

But in his Statement of Claim claimant alleges he acquired 5,300 shares in 1940 and in his affidavit of June 1, 1954, he swears that Fallersa was chartered on June 10, 1940. Furthermore, Battistella avv. Silvio, vice-president and legal representative of Fallersa, in his sworn statement of December 29, 1951, confirms the "foundation" of Fallersa

in 1940, and Alberto Hesse himself, in another affidavit executed on December 29, 1951, refers to the "time (1940), when 'Fallersa' was founded." Accordingly, how could Alberto Hesse on the death of his father in 1938 "then and there" decide to invest in Fallersa when it was not chartered until 1940? Another discrepancy is noted when Alberto Hesse swears in his affidavit of May 5, 1951 that Fallersa began purchasing land and commencing the construction of buildings in 1939 and that he advanced monies to Fallersa in the amount of 6,988,000 lire during the years from 1939 until 1946.

These discrepancies in themselves are not, of course, fatal to his affidavit, but they are not the only ones which make it difficult to accord credibility to his evidence. In the same affidavit Alberto Hesse swears:

"10 c. That under the laws, decrees, edicts, ordinances and other statutes, made and provided for in Fascist Italy, then in force in Italy, only citizens of Italy were granted the privilege to own, administer, manage and control factory property without interference by the governmental authorities of Italy."

And in his affidavit of December 29, 1951, he again swears:

"that the investment was done in his own name and not in that of John W. Hesse, owing to the Italian Laws, which did not permit investments to foreign citizens without a special governmental authorization."

But claimant himself submitted the affidavit of January 2, 1952, of Silvio Battistella that foreign citizens could not have interests in Italy invested in commercial and industrial enterprises without a preliminary authorization from the Government by Italian Law No. 807 of July 24, 1942. How could this law affect the acquisition of the shares in 1940? But even assuming that a similar law did exist in 1940, Alberto Hesse's reasons for not applying for authorization are equally unconvincing. In his affidavit of December 29, 1951, he swears:

"that he did not present an application for obtaining such an authorization, because it was possible to have a refusal from the Fascist Authorities governing Italy at that time (1940), when 'Fallersa' was founded, being

"John W. Hesse U. S. citizen and being the U.S.A. in war against Italy, and furthermore the undersigned ran the risk of having sanctions, penalties and seeing eventually the assets he was administering sequestered since they were belonging to an 'enemy'."

It is a sufficient comment on this statement to observe that the United States was not at war against Italy until December 1941.

In his affidavit of April 6, 1951, Alberto Hesse also swears:

"11. That the reasons for the oral agreement - and not an agreement in writing - by and between your deponent and the claimant were, that no third person need be advised or informed as to this agreement since in the event of the death of a person leaving behind more than two children, no estate proceedings were required in order to validly and legally transfer the estate to the heirs under the laws and statutes made and provided for in Italy, nor were any estate - inheritance gift - or other taxes be assessed against such heir of a person so deceased; that therefore without any intervention, assistance, intercession or other cooperation of any governmental, judicial, or administrative agency, the property of such estate could validly and legally be transferred from the deceased to the presumptive heirs by any arrangement he or his heirs saw fit."

We find ourselves quite unable to follow the tortuous course of this language. If the affiant believes he has a point to make in this passage, he has been utterly unable to communicate his meaning to us.

But Alberto Hesse's activities in connection with Fallersa also belie claimant's position that he was a mere nominee. The evidence shows that he took an active management in the affairs of the company, and his affidavit of December 30, 1953, shows that on that date he was still a member of the Board of Directors. After the end of the war he accompanied Eng. Baldi to the company's plant and collaborated with Yugoslav officials in having bomb damage repaired and having the plant completely reactivated. In an affidavit of February 8, 1949, filed with the Department of State, claimant swears:

"That your deponent has devoted considerable efforts and exhausting labor through his trustees in Italy for the purpose of repairing bomb damage and thereafter completing said factory property which was urged upon said representatives in Italy by the Yugoslav (sic) military authorities in charge of said region. That said representatives were able to preserve certain values in connection with aforesaid property for the benefit of all shareholders and not only for that of your deponent; That, therefore



"your deponent reserves his right to demand reimbursement from the other shareholders respectively advancing interests, in particular from American & European Agencies Inc. in New York in an amount of  $7\frac{1}{2}\%$  of the sum claimed by said American & European Agencies Inc. against the Yougoslav Government or from whatsoever source said claim will be allowed." (Emphasis supplied)

However, in an action brought in the Supreme Court of the State of New York, Queens County, against American and European Agencies, Inc., for such reimbursement, the suit was brought in the name of Alberto Hesse, and not in the name of claimant. This fact would seem to negate claimant's assertion that his brother was merely his agent in reactivating the factory.

A claim of beneficial ownership of stock, the legal title to which is in another person, should be supported by proof as clear, consistent and convincing as might reasonably be expected under all the circumstances. This is particularly the case where, as here, the legal owners are Italian citizens, and as such ineligible to be awarded compensation by this Commission for the taking of property by the Government of Yugoslavia. This circumstance is further aggravated by the fact that the legal owner of 5,270 of the 5,300 issued shares which claimant asserts he owns is his brother and that the legal owner of 10 of the remaining 30 is his nephew.

We do not consider that claimant has met the standard of evidence which must be met in a claim of this nature and of the amount involved. We hold that claimant has not sustained the burden of proof by showing that he owned an indirect interest through Fallersa of property which was taken by the Government of Yugoslavia. Accordingly, the claim is denied.

Dated at Washington, D. C.

OCT 15 1954