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TWISTED THREADS: H. KEMPNER AND THE COTTON SPINNERS
LITIGATIONS, 1919-1956

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Ph.D. 1984

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TWISTED THREADS:
H. KEMPNER AND THE COTTON SPINNERS LITIGATIONS,
1919-1956

by

BARBARA F. GUIDRY

A THESIS SUBMITTED
IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE
DOCTOR OF PHILOSOPHY

APPROVED, THESIS COMMITTEE:

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MAY, 1984
ABSTRACT

H. Kempner (Unincorporated), of Galveston, Texas, is a dynastic business trust. During the early 1920s, the firm, through two subsidiaries, permitted a group of German and French textile mills to finance cotton purchases by combining an ordinary business practice—speculation in the futures market on borrowed money—with a standard business form—the conversion contract. The practice, while both common and legal in the United States, produced a voidable contract in Germany, dependent on the whether the parties principally intended legitimate business purposes or speculative ones.

When the American futures market declined, the spinners absorbed ever-increasing losses until, confronted with bankruptcy, they repudiated their contractual obligations. After failing to settle the disputes by negotiation, H. Kempner sued the mills.

From 1928 until the outbreak of World War II, the cases gradually worked their way through the German and French courts. Although both sides presented consistent positions throughout the litigations, decisions varied from case to case as judges evaluated the individual actions to discover
intent. Statutory gambling prohibitions, procedural
evidentiary requirements, Great Depression economic factors
and Nazi racial policies complicated the legal course. The
1940 German invasion of France, which plunged Europe into
total war, effectively terminated the pending suits.

H. Kempner subsequently sought redress, through private
Congressional legislation, from the Alien Property
Custodian's Fund which contained assets seized from German
nationals during World War I. After substantial efforts by
Senator Tom Connally and Congressman Clark Thompson, both
from Texas, Congress enacted a relief bill for H. Kempner in
1946. President Truman vetoed the bill. However, within a
year, Truman signed similar legislation on behalf of the
Association of American Awardholders. A powerful group of
large corporations with claims similar to H. Kempner's, the
Association succeeded where H. Kempner failed because of
superior political position.

H. Kempner subsequently renewed its efforts. Texas
congressmen in both houses, including Lyndon B. Johnson in
the Senate, introduced relief bills in every legislative
session. Finally, in 1953, after several years of committee
wrangling, Congress enacted a second bill. Relying on
Truman's precedent, President Eisenhower vetoed the
legislation. This set-back, after more than a generation of controversy, litigation, and legislation, caused H. Kempner to abandon its cause.
For Allen, A. J. and Michelle
ACKNOWLEDGEMENTS

This dissertation, a milestone in my life, marks the culmination of an apprenticeship and the inauguration of a career. Without help from many special people, the transition would never have been accomplished:

Harris Kempner, current patriarch of H. Kempner (Unincorporated), made his family's personal and business papers available for research. Wonderfully literate, absolutely candid, and richly detailed, the collection is an historian's treasure trove.

Jane Kenamore, Archivist at the Rosenberg Library in Galveston, and the entire library staff graciously and unhesitatingly accommodated all my requests.

Peter Brink and the Galveston Historical Foundation generously funded the research and writing.

Harold M. Hyman, William P. Hobby Professor of History and my mentor these past four years, taught me much about the art of history and the craft of writing it. He, Professor of History John B. Boles, and Associate Professor of Administrative Science George C. Greanias clarified my thought on many important points with rigorous, incisive criticism.
Others at Rice University, especially History Professors Katherine Fischer Drew, Ira Gruber and Thomas Haskell, contributed much to my training. The Department of History was very generous with fellowship awards.

Most importantly, my family and friends sustained and encouraged me throughout this challenging experience.

To all of you, I extend my heartfelt thanks.

Barbara F. Guidry
San Antonio, Texas
April 24, 1984
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INTRODUCTION

"Twisted Threads" was an absolute joy to research. The raw data belonged to the 350 box Kempner Family and Business Collection that Harris L. Kempner of Galveston donated to that city's Rosenberg Library. The principal figures, Isaac H. (Ike) and Daniel W. (Dan) Kempner, were literate, astute observers of their world. With more color and detail than any monograph or book could hope to duplicate, they recorded the politics, economics, personalities, and trends of their time. They developed grand strategies and small plans. And, because they never intended their papers to become public, Ike and Dan were completely candid.

That candor, which showed Ike and Dan engaged in possibly suspect business practices, transformed an interesting dissertation topic into an ethical dilemma. Because the materials were recent, some of the principals and many of their children are still alive. Further, in February, 1982, when Harris L. Kempner first talked with me about the events recounted in "Twisted Threads," he called them his family's most bitter memory. "Twisted Threads," therefore, has the potential to embarrass some very nice
people.

The question, then and still, for me became: Were the materials so important historically to justify continuance of the project? The answer was a cautious and limited affirmative. The Kempner papers provided a rare first-hand opportunity to examine--within a state, regional, national and international context--the trade practices of a large, regionally important, Texas cotton firm during and after the 1920s. Given the limited circulation and scholarly use normally afforded dissertations, the value of the research seemed compelling. However, no publication decision can, or will, be made without first carefully considering Kempner family wishes.

"Twisted Threads" opened in the immediate post-World War I era. President John Calvin Coolidge, boasting that the business of America was business, presided over a seemingly moral and affluent nation in the 1920s. The philosophy, however, was soon outdated; the morality, relative; and the affluence, transitory.¹

Although continuing Warren G. Harding's retreat from progressive ideals, Coolidge worked to restore a measure of integrity to a government wracked by scandal.² Although rectifying Harding's worst excesses, Coolidge never seriously contemplated any thorough-going purge of all
government impropriety. His administration, like Harding's, was remarkably tolerant of corruption. Government policy under both presidents frequently encouraged individuals and businesses to evade and avoid existing laws, sometimes for a price.²

The public revelation in the 1920s of persistent and wide-spread governmental malfeasance, qualitatively ranging from sensational to petty, made Americans cynical.³ John Hays Hammond, an influential business leader who accurately analyzed the national temper, found Americans gradually abandoning any notion that they could,

...find perfection in government or that an excessive faith in the efficacy of laws [was] going to substitute for a reasoned intelligence on the part of the individual.⁴

The reliance on individual reasoned intelligence neatly encapsulated the utilitarian thought of William James, William Pierce and John Dewey. These philosophers and many other contemporary intellectuals posited a rationalizing, rather than a rational, man and substituted the notion of local normality for imperative absolutes as the test of legitimacy.⁵ Thus, as government, with national approval, abdicated its progressive roles as social arbiter and legal mediator, individuals simultaneously qualified traditional
ethical standards with the relativist criteria of successful means to desirable ends.

Institutional business stepped into the power vacuum created by governmental retreat. Largely freed from governmental oversight in fact, though not in law, and controlled by utilitarian masters, business reasserted its pre-progressive position as the nation's most powerful, most emulated—and most successful—institution.⁶

Businessmen, in America's super-heated economic environment of the 1920s, knew that stock and commodities investments were the premier means to success. Speculation with borrowed money, a common practice in those heady times, inflated stock and commodity market values artificially. Brokers loans, $800 million in 1921, increased more than 300% during the decade and exceeded $2.6 billion in 1929. So long as the markets continued to rise, and they did throughout most of the twenties, an enterprising man could, without investing a cent of his own, become instantly wealthy. Few who followed this path retired their original debts. Instead, ignoring the disastrous consequences certain to ensue when and if the markets fell, they continuously reinvested their paper profits to achieve even greater delusive riches.⁷
From huge corporations to individual proprietorships, businessmen followed suit. Rather than returning all profits to stockholders as dividends, many businesses retained part of the net for market investment. Individual proprietors invested excess profits. These institutions and businessmen, too, netted impressive, though hollow, gains. For them, the onset of a financial panic meant only the loss of invested assets, not the probability of total ruin.

Astute economic observers during the 1920s, largely unheard voices from the wilderness, noted two ominous trends: a steady decline in farm commodity prices and a sag in industrial production. However, the euphoria of wealth, and the security against life's vagaries which it brought, assured most Americans that they controlled their own destinies.

"Twisted Threads" was a case study of one firm's business practices during this ethically relative and financially adventurous era. Ike and Dan Kempner were the managing heirs of H. Kempner (Unincorporated), a dynastic business begun in the mid-1850s by their deceased father, Harris. Competent, well-established businessmen, Ike and Dan were also thoroughly conservative. They clung to established business modes: rarely innovating new methods, they often adapted existing practices to satisfy current
needs. They were also cautious: after examining the attendant factors and weighing the probability for gain against the possibility of loss, they accepted prudent risks.

In 1919, Ike accepted what, in his judgment, was a prudent risk. On behalf of H. Kempner, he permitted a group of German and French spinners to finance cotton purchases by combining a common business practice—stock market speculation—with an ordinary, but now illegal, business form—the conversion contract. The symbiotic relationship between H. Kempner and the spinners, designed for mutual advantage, quickly soured. Over the next three decades, Ike and Dan doggedly struggled against nearly interminable misery: reneging spinners; insubordinate and disloyal agents; economic misfortunes; legal uncertainties; and political adversities. Faced with increasingly uncontrollable outside forces, they pragmatically used every means at their disposal to achieve their purpose—and never succeeded.

Like all well-integrated individuals, both Kempners had many personality facets. Although each man had his own idiosyncratic make-up, they shared two important characteristics. First, toward others and in their private lives, the Kempners, as depicted in Chapter I, were model
citizens who espoused traditional personal ethics and business practices. However, within the privacy of their corporate boardroom, as analyzed in Chapters II - VII, another paradigm existed: the Kempners very closely approximated contemporary standards. These seeming polarities were not incompatible. Instead, they were consistent and appropriate behavior patterns required by different environments.

Second, in the spinners' litigations, Ike and Dan demonstrated an extraordinary perseverance. Neither obsessive nor pathological, this special persistence derived from the fortuitous dovetailing of their priorities with the needs of others. As the cases divided into three clearly discernable parts--negotiation, litigation, and legislation--the Kempners employed a succession of lawyers and agents. These men served a three-fold purpose: they used their special skills to advance H. Kempner's cause; at critical junctures, they brought fresh enthusiasm to the cases; and each had personal considerations, mainly financial, for pressing onward to a final, successful resolution. Coalescence of these factors, plus Kempner determination, accounted for the litigations' remarkable longevity.
Finally, a caution: some Kempner business practices appeared quite startling. This dissertation, however, never intended to muckrake or judge. At all times, the criterion for evaluation was context: No better than their contemporaries, but certainly no worse, Ike and Dan Kempner can be neither understood nor appreciated unless perceived on their own terms, in their own world, and with their own needs. Thoroughly comfortable as in their role as American entrepreneurs during the early twentieth century, Ike and Dan Kempner never surrendered, regretted—or apologized for—that identity.
ENDNOTES


7. Ibid.

8. Ibid.

9. Ibid.
CHAPTER I

"If you are not insane, your [sic] doubtless a complete crank," wrote Harris Kempner to an indolent cousin in 1887:

I note your...[belief that] you can make no money on borrowed capital...the ideas which you advance show absolute signs of insanity on your part...Your actions are disgraceful—the idea that a young man of your age should lay round [and] do nothing in a country like this is positively unexcusable [sic]—such a thing has never been heard of before...[except] from a crank or a lunatic—this country is large [and] full of wealth and resources in endless quantities—no country in the world like this and yet you who claim to be sound minded[,] young and experienced cannot make even a living for yourself.

Successful experience, not mere pique, dictated the exasperated tone of Kempner's letter. Borrowed capital had been the key to his financial success. Over the years, he had mortgaged his assets and invested the borrowed monies shrewdly. The returns on these investments enabled Kempner to repay his loans on time and to earn a profit. This profit, he re-invested, creating additional assets to pledge against other loans. Kempner repeated this cycle many
times, gradually becoming a millionaire.

The man who came to the United States on March 3, 1854, as a penniless immigrant found the New World to be the answer to an optimist's dream. It was an opportunistic environment where borrowed capital coupled with shrewd entrepreneurship could yield substantial rewards—financial and otherwise—for achievement.²

Harris Kempner had fled Krzepice, Russian Poland, to avoid induction into the Czar's armies. After arriving in New York, the seventeen-year-old Jewish boy soon found work as a bricklayer's assistant. Shortly thereafter, he became a brick subcontractor on his own account. He also set himself diligently to the task of learning English. For unknown reasons, though they may have been related to the unfavorable business climate caused by the Panic of 1857, Kempner migrated westward to Texas. At that time, he had between four and five thousand dollars in savings with which to establish himself.³

Kempner, one of the relatively few Jews to settle in the American South, opened a mercantile business in Cold Spring, a small town in the pine belt of southeast Texas. He supplemented his store sales by peddling merchandise door to door, from plantation to farm, throughout the Trinity River area.⁴
Kempner also began a money lending operation. Using his capital assets as collateral, he borrowed money from New York banks at current interest rates. Kempner then loaned the money to his neighbors, for a shorter period of time than on his own note and at a 2% higher rate of interest. When the loans to his neighbors matured, Kempner collected the amounts due him, kept the 2% as profit, and repaid his New York creditor. Kempner then invested his profits into various enterprises, thereby increasing the amount of capital assets which he could pledge as loan collateral. With additional collateral, Kempner progressively increased the amounts he could borrow—and, in turn, loan. This process worked continuously to increase Kempner's fortune.⁵

Kempner quickly established a solid reputation as a respected merchant and an honest moneylender. His neighbors were so confident in his integrity that they made Kempner depository for San Jacinto County funds. Additionally, during the Civil War, Kempner held large sums of money in trust for many of the wealthy planters.⁶

When the Civil War began, Kempner joined the Ellis County "Blues," a local militia company of about 4,000 men. The company was part of W. H. Parsons' Twelfth Texas Cavalry which saw combat action from Cape Girardeau, Missouri to
Louisiana. Kempner's enlistment was more a matter of prudence than principle. He owned no slaves and had no strong pro-slavery sentiments. However, since his neighbors, among whom he intended to live and work the remainder of his life, cast their lot with the Confederacy, Kempner did, too. He served throughout the war. During a battle along the Red River, he received such a severe wound that his comrades left him for dead. Although he largely recovered from his injuries, Kempner did not return to a combat unit. He transferred to the Quartermaster's department and reached the rank of Quartermaster Sergeant.\(^7\)

With the war's end, Kempner returned to his home in Cold Springs and reopened his business. A field evaluator for R. G. Dun & Company described him in 1867 as "An enterprising businessman. Doing a large business. No visible judgments against him. Of good business habits."\(^8\) The business did quite well. In 1869, a Dun evaluator estimated Kempner's worth as a "clear $9 or 10 thousand" and found his prospects for success "very flattering."\(^9\) Less than a year later, Kempner lost money after investing in Lessauer and Company of Galveston. However, a Dun agent reported that Kempner was still "perhaps the strongest merchant in the township" and "will succeed anywhere."\(^10\)
In 1870, Kempner sold his Cold Spring interests to Darby and Hatton.\textsuperscript{11}

He moved to Galveston, Texas' largest city as well as its commercial and financial center. With Max Marx, he established Marx and Kempner, a liquor importing and wholesale grocery partnership. The firm flourished and like most in a specie-scarce society, conducted transactions partly in cash and partly through the extension of credit secured by the sale of future crops. Cotton was the dominant crop in south and east Texas. It served as the principal medium of exchange when first, the farmer, and second, the retailer, paid debts partly in kind rather than entirely in cash. Marx and Kempner received payment from retail customers in cotton as often as in cash, then found a cash purchaser for the cotton. In this way the handling of substantial quantities of cotton became a necessary element in the business.\textsuperscript{12}

In 1882, Marx and Kempner sold the grocery and liquor business to Ullman, Lewis and Company, and thereafter concentrated solely on cotton. In 1886, Kempner bought out Marx's shares of the partnership and renamed the business "H. Kempner." He used the local and national connections which he had established throughout the previous two decades to create, solidify, and then expand his position as one of
the South's leading cotton merchants. A year later, Kempner purchased a large, though not controlling, interest in the Island City Savings Bank of Galveston after its failure and the suicide of its president. He became president, retired the liens and then used the bank as a ready source for capital with which to finance his various entrepreneurial activities.

Kempner was a prudent man. He studied all his options and sought advice from disinterested persons before entering business arrangements. In 1883, Kempner contracted with the Texas Penitentiary Board to use convict labor for ten years to manufacture cheap furniture and other inexpensive goods. The state provided the labor, buildings, machine tools and other implements. It also provided the guards. The area around Huntsville, Texas, home of the state penitentiary, abounded in timber of all kinds suitable for the work. Kempner furnished the fuel to run the machines. He paid the state sixty cents per day for each convict who worked. Kempner hired a foreman to oversee the operation. However, he also wanted a general manager to live in Huntsville, a man financially, and therefore personally, committed to the venture's success. Kempner wrote to Morris Rosenfield, a Moline, Illinois, furniture manufacturer, seeking the name of
...another man to give general management and special attention to the business, to act with us, counsel with us, and carry out the ideas which we may agree upon. A man of good judgment and scope of mind who can see what is needed and recommend it. We would like such a man to take an interest with us, and invest some capital—not that we need capital, on the contrary we do not need a dollar, however large the business may grow—but we would like his money in it as it would be sure to make him feel more interested in the business.16

Kempner's inquiry concluded with a request for information about specific manufacturing techniques, patents, and lumber requirements. He also asked Rosenfield to compare the advantages of manufacturing the entire product from raw materials against those of merely assembling ready-made components.17 Kempner conducted all his business affairs in the same manner. While his attention to detail must account heavily for the increasing size of his personal fortune, he never permitted himself to become bogged down by minutiae.

Kempner was also acutely aware of the intimate link between prosperity for Texas and personal wealth for himself. He worked hard to enhance the entire Gulf Coast region's abilities to produce and market high grade cotton and other crops in large quantities. He perceived that ready financing, abundant water and adequate transportation were crit-
ical resources which must be readily available. Kempner invested in many banks, water improvement projects, railroads, and steamship companies. These were not passive investments designed simply to increase Kempner's fortunes. Wherever he placed his money, Kempner sought to exert active control. He was a director of many companies in which he held sizable blocks of stock. He also owned ranches, farm lands and a variety of other small businesses.\textsuperscript{18}

Kempner's personality, summarized in 1879 by the historian, Charles W. Hayes, was

\begin{quote}
. . .business all over. . .a cool, calculating man, full of resources, thoroughly posted in the markets, [who] has no time for pleasure, but is wholly and entirely engrossed in his business affairs. A man of few words and those directly to the point. Quick to see a change in the market, and take advantage of it. Pushing, driving, energetic, he has no time for the pleasant amenities of life.\textsuperscript{19}
\end{quote}

In fact, however, this remarkable man, so full of enthusiasm for his business and for the opportunities to be found in the new world, found other matters of interest as well. Kempner had a deep religious faith and a strong sense of social concern. He was a founder of Galveston's synagogue and contributed to a large variety of public and private philanthropies.\textsuperscript{20} He also found time to court and wed Eliza Sensheimer—and he did it with typical decisiveness.
Kempner, according to family anecdote,

... had made a trip to New York to buy goods for his wholesale grocery establishment, principally tobacco, by the carload in hogsheads, snuff, canned goods in carloads or material amounts. In New York City, he stopped, in the interest of necessary economy, at a hotel where standard meals were served, with every dish from soup through dessert placed on the dining table at once. Seated across the table... was a young girl whose appetite evoked his attention. He argued to himself that such a girl must be vigorous and healthy. She was rather good looking and vivacious. He arranged to meet her and after his return to Galveston convinced himself that on his next trip north he should go to Cincinnati (where he learned she resided) where he undertook to buy whiskey by the carload. He, without calling on any stimulation from his whiskey purchase, proposed, was accepted, the wedding date fixed and marriage followed [on January 21, 1872].

Almost exactly one year to the day later, on January 14, 1873, came the first of eleven children, Isaac Herbert (Ike) Kempner. The family continued to grow rapidly with the births of Abe (December 6, 1874), Daniel Webster (March 20, 1877), Sidney (January 2, 1879), Hattie (October 10, 1880), Robert Lee (January 21, 1883), Stanley Eugene (April 7, 1885), Joe Clarence (December 25, 1886), Fannie (March 10, 1888), Sara (July 7, 1890), and Gladys (March 10, 1893). Three sons--Abe, Sidney, and Joe Clarence--died in infancy or early childhood. All the rest survived to adulthood.
Kempner had a deep and abiding interest in his children. When Ike went east to school, Kempner wrote often, both to his son and to his son's teachers, seeking information about curriculum, academic progress and potential career plans. As always, Kempner stated his own opinions, but also expressed a willingness to consider the ideas of others before making final decisions. He wrote to Professor G. W. C. Lee, of Washington and Lee University:

When...[Ike] comes out to take his place among men I want him fitted for any position to which he may aspire or be called. I prefer that he read law, but at the proper time. He seems to think for himself that he is now ready. What is your opinion? Is his general education now finished?

Ike apparently had Professor Lee's support because he went directly into law school from his three year course of undergraduate studies.

Kempner showed great affection for his children. On January 10, 1894, he wrote to Ike:

My dear son,

When this reaches you...you will obtain your majority and in age "a man among men," as I hope you will be through life, both physically and mentally. You have good health now and if you will take good care of yourself, avoid excesses, pursue the "happy medium" in your enjoyments, it may be the pleasure of God, as we fervently hope, to preserve you for "a ripe old age."

Not only in years, but in education you are at the threshold of man's es-
tate. Preparatory text books are soon to be laid aside for advanced culture and the experience and responsibilities of life.

You have our hopes and prayers that you may be a useful man[,] always honorable and distinguished in your day and generation.

Your father
H. Kempner

On April 13, 1894, Kempner died from Bright's disease, an acute and chronic kidney ailment. The Galveston Daily News carried an account of his death:

HARRIS KEMPNER DIES
Another Galveston Millionaire Passes Away
A Sketch of His Life

After a serious illness of several days Harris Kempner of this city breathed his last at the family residence on Sixteenth and I at 9.15 last night from a complication of diseases. Several days ago it was known that he was dangerously ill and everything that medical science and tender nursing could do for him was done, but the hand of the grim destroyer could not be stayed. Early Thursday morning it was announced by his physicians that he would have to die, and it was expected he should pass away that day. But he continued to linger in the shadow of the valley until the time stated above.

Kempner left behind a widow and eight children, ranging in ages from one to twenty-one. Only Ike, still in law school at Washington and Lee, and Dan, a student at Bellevue High School, Bellevue, Virginia, lived away from home. After
Kempner's funeral, Ike immediately terminated his legal studies although he lacked only two months until graduation. He remained in Galveston to run the family businesses. Dan returned to school in Virginia.\textsuperscript{26}

At his death, Harris Kempner was one of the Gulf Coast's largest cotton brokers as well as one of its leading entrepreneurs and citizens. He left an unencumbered estate worth $1,198,844.00. The success Kempner found in life was an incredible achievement for a man who had come penniless to his adopted country only thirty years before.\textsuperscript{27}

Despite the meticulous attention Kempner usually demonstrated in business matters, he made one conspicuous oversight. Kempner failed to execute a will. The Texas Probate Code, \textit{Revised Civil Statutes of 1879}, provided detailed instructions for administering an estate whose owner died intestate. According to the Probate Code, Kempner's lawful heirs were his widow and children.\textsuperscript{28} The proportion of the estate each heir received depended on how Harris Kempner had held title to his property and whether the property was real or personal.

Separate property--that which he acquired before marrying Eliza--remained solely Kempner's during his lifetime. At Kempner's death, Eliza received clear title to one-third the personal property and a life estate (the use for the du-
ration of her life without any capacity to sell) in one-third of the real property which fell in this category. The children immediately shared the remaining two-thirds of both the personal and real property. They also held the residual title to the one-third real estate in which Eliza held a life estate.  

Community property—that which he had acquired during the marriage—belonged jointly to Harris and Eliza. They held title to it as joint tenants, each owning an undivided half, even though only his name may have been on property deeds or title certificates. At his death, Eliza became outright owner of one-half the property, not as an heiress, but as the "survivor-in community." In effect, the law simply allowed her to keep what was already hers. Kempner's undivided half of the estate devolved on his children in equal shares.  

Homestead property—urban land upon which Harris and Eliza lived and which had an assessed value of less than $5,000 exclusive of any improvements—descended to the heirs like other community property since it had been acquired during the course of the marriage. However, it could not be partitioned among the heirs during Eliza's lifetime.  

Since all the children, other than Ike, were minors, the law required that the estate be administered as a care-
taker trust under court supervision. A caretaker trust existed to protect and serve the interests or needs of minors, legal incompetents or the elderly. Probate procedure required Eliza to file a three part affidavit in Galveston County Court which listed the place and cause of her husband's death, identified each heir, and attested that a community estate existed between herself and Harris Kempner. Within ninety days, she had to submit to the court a sworn inventory of the estate's assets and liabilities. Finally, Eliza had to post a performance bond, the amount of which was "double the estimated value of the personal property" plus "a reasonable amount to be fixed at the discretion of the county judge to cover rents revenues, and income derived" from the use of the estate's real property. Family friends signed the necessary bonds which totalled more than $1.5 million.

The county judge then empowered Eliza to act as community administratrix. She promised to administer the estate faithfully, to "take such care of the property of the estate...as a prudent man would take of his own property." She had

. . .the power to control, manage, and dispose of the community property, as provided in this Code, as fully and completely as if...she were the sole owner thereof; to sue and be sued...; [to] carry on as a statutory trustee for the
owners of the community estate, investing and reinvesting the funds of the estate and continuing the operation of community enterprises until termination of the trust. 

The phrase, "as provided in this Code" placed stringent restrictions on what appeared to be a broad grant of discretionary power to the trustee. No trustee action, such as sale, acquisition, dispersal, or investment, was valid without court approval. The standard for trustee behaviour under the Texas Probate Code was not simply the prudent man, but rather the prudent man supervised by a prudent court. The administratrix also had to keep a full, complete accounting of all monies and property entrusted to her. Texas law clearly intended for the estate to be conserved for its heirs. After twelve months, the survivorship in community could be terminated with the consent of all interested parties.

Although Eliza was the survivor in community, practical control of the family enterprises lodged with Ike. He made all major decisions with respect to the overall management of H. Kempner's many investments. Ike had a flair for business, and with help from his mother's brother, Joseph Seinsheimer, further increased family's fortunes.

Ike's specific responsibility was to supervise the myriad day-to-day operations of the cotton business. He
directed the agents who, during the growing and harvesting season, travelled throughout Oklahoma, Texas and Mexico to assess the size, grade and value of the current crop. At harvest time, these agents tried to outbid, at the lowest possible price, agents of other brokers in order to assure H. Kempner of adequate cotton supplies. After purchasing the cotton from a grower, the agent arranged for its shipment to Galveston, preferably aboard a railroad or steamship line in which H. Kempner had an interest. In Galveston, Ike hired graders to sort the cotton by staple (fiber) length and quality. He also contracted with various compresses to bale the cotton for shipment to customers.44 H. Kempner, additionally, employed agents throughout Europe to negotiate purchase contracts with various spinning mills. Shipments from Galveston to Europe were usually aboard vessels in which H. Kempner had an interest.45

To facilitate the process of linking farmer to spinner, H. Kempner conducted transactions with both spot and future contracts. The spot, or actual, cotton market was what its name implied. When a spinning mill or other potential customer needed cotton immediately, it approached H. Kempner and arranged to buy the required number of bales, with cash payment due upon delivery. To serve these customers, H.
Kempner maintained seats on many local cotton exchanges, such as those in Galveston, Houston, and Memphis as well as on the two national cotton exchanges in New York and Chicago.46

The cotton futures market permitted cotton processors to assure themselves a steady supply of raw materials without having to maintain large stocks on hand. A spinner, having anticipated his annual needs, rather than purchasing and storing the entire amount, purchased it in increments. He made contracts with various brokers, H. Kempner among them, to purchase cotton at a fixed price during the five harvest months--March, May, July, October, and December. The contract guaranteed the purchaser his goods at a specific price. If need exceeded supply, the spinner then made spot market purchases. For spinners and other purchasers of raw cotton, the futures market assured a steady supply at a predetermined price.

However, not all purchasers of cotton futures were spinners. The cotton futures market had a highly speculative aspect, in which a man could become either speedily rich or rapidly bankrupt. Speculators bought futures contracts, and at their maturity, sold the contracts for whatever they would bring to spinners who needed spot cotton or brokers who needed the contracts to fill their own obliga-
tions. If the speculator gambled successfully, he bought low and sold high. Small crops or high demand meant large profits for speculators. Large crops or low demand usually meant losses.

H. Kempner, as a broker, made no attempt to differentiate between bona fide purchasers and speculators. However, H. Kempner, itself, did not speculate. Its sales and purchases were always genuine transactions. Under Ike's leadership, H. Kempner essentially adhered to Harris Kempner's business philosophy: act conservatively and knowledgeably. H. Kempner's profits continued to rise because of Ike's close attention to factors affecting crop development and market demand. Ike received steady reports from the company's purchasing agents about factors affecting the size and quality of crops. He received similar information from his sales agents about the quantity and quality of cotton desired by spinners. By correlating the reports, Ike anticipated accurately the approximate volume of business H. Kempner could transact successfully.

Ike's business competence extended beyond cotton. In 1894, he passed the Texas State Bar examination. The next year, he became the youngest man elected to the Board of Directors of the Galveston Cotton Exchange. In 1899, Ike assumed the office of Galveston city treasurer, a post he
held when the Great Hurricane of September 8, 1900, devastated Galveston Island.47

During the twenty-four hours the storm raged over the island, Galveston lost over 50% of its taxable assets. Nearly 7,500 people, one-fourth of the city's population, died either by drowning or from flying debris. Another 7,500 soon left the island for safer locations.48 In the wake of these catastrophic financial and human losses, Galveston's elected officers, Ike among them, applied to the Texas State Legislature for revision of the city charter. Galvestonians hoped to create a government that would minimize partisan politics, be economical to operate, and both accessible and accountable to the public. Ike and his fellow officials devised the city commission form of government.49

Additionally, Ike and two other city commissioners--George Sealy, Sr. and B. Adoue--effected a settlement with Galveston's New York creditors so that none lost any principal despite the city's huge losses in tax revenue, property, and population. As a result of this, Galveston's municipal bond rating never fell, thereby enabling the city to obtain favorable interest rates on the bonds it sold to finance reconstruction projects.50
Ike's achievements in business and politics increased the family's fortunes and enhanced its community standing. As Harris Kempner's other sons reached maturity and completed their educations, each joined Ike in the family business and undertook civic responsibilities of his own.

Dan, the second son, graduated from Bellevue High School in 1895 and from the University of Virginia in June, 1898. He was the first Kempner to receive a college degree. He traveled and studied in Germany and France for about one and one-half years. During this time, Dan perfected his speaking knowledge of German and French. He met H. Kempner's European agents and also made valuable business contacts. In September, 1899, Dan returned to Galveston and assumed an active role in H. Kempner. Ike and Dan continued their father's conservative business policy of investing in transportation, public utilities, hotels, water projects, and banks. They followed his lead in exerting personal control over any companies in which they had substantial investment and also routinely sought disinterested expert advice before making major decisions.51

Dan provided H. Kempner with an additional reservoir of management skills which enabled the company to expand into another aspect of the cotton trade. In 1900, Ike and Dan purchased the Taylor Compress in Galveston. They renamed it
Merchants and Planters Compress and Warehouse Company. Dan became its president. This acquisition eliminated the loss in profit margin which occurred when H. Kempner paid other businesses for grading, compressing and warehousing. H. Kempner could also earn additional profits by providing these same services for other dealers.52

Ike and Dan continued to broaden the business enterprises of H. Kempner. In 1901, the men invested in the Spindletop Field in Beaumont, Texas, after the discovery of prolific oil. However, in the early twentieth century, there was little market for oil, even at the rate of ten cents per barrel. The family soon sold these oil properties. In 1902, H. Kempner purchased the controlling interest in the Island City Savings Bank, renamed it the Texas Bank and Trust Company, and operated it as a private bank.53

In 1903, Robert Lee, known as Lee, entered the firm. Like Dan, he had attended Bellevue High School and the University of Virginia. He became assistant cashier of the Texas Bank and Trust Company in 1905, shortly thereafter becoming Cashier. Although Lee did not become bank president until 1938, he was H. Kempner's official representative in the bank and exercised substantially more authority than the usual cashier. Like his brothers, he also served as officer
and trustee of many other firms in which H. Kempner had an interest.\textsuperscript{54}

Stanley Eugene, "Pat", followed much the same academic route as his brothers, attending school in the East from 1899 until his return to Galveston in 1904. He became an employee of the American National Insurance Company which his brothers had purchased jointly with W. L. Moody of Galveston the year before.\textsuperscript{55}

In 1906, over Eliza Kempner's objections, the Kempner brothers joined W. T. Eldridge in purchasing the Imperial Sugar Company properties and mills at Sugarland, Texas. Eliza's reservations had nothing to do with Imperial's profit potential. Rather, she was concerned about her sons' association with a man who had a hot temper and a quick trigger finger. Eliza's fears proved groundless and the business affiliation between H. Kempner and W. T. Eldridge was congenial, lasting and highly profitable.\textsuperscript{56}

The same could not be said for H. Kempner's association with W. L. Moody. American National Insurance had a seven man board of directors. Moody appointed himself, F. W. Catterall, and Moritz O. Kopperl. Ike appointed himself, M. Lasker, and C. G. Pillot. Congressman Tom Ball, a joint appointee, was to be the neutral member. In practice, however, "amity and neutrality"\textsuperscript{57} within the organization were
impossible. "Trickery and deception. . .gradually but definitely" permeated Moody's actions. Ike unhappily recalled that:

In the year 1908 I had returned from a trip of about ten days, during which, our then, American National Insurance Company was examined. The Texas State Commissioner of Insurance was Thomas B. Love. On my return I was advised by Mr. Moody that the Commissioner had insisted that more time by the owners must be given to the affairs of the company and more capital subscribed. Mr. Moody stated he was not prepared to give his time unless he purchased our interest and he presumed we felt the same way. He reported that to comply with what Commissioner Love recommended that one buy the other out since he, Moody, would not otherwise care to look after the company's affairs.

The Kempners sold their interest in the company to Moody. However, according to Ike, the matter did not end there:

Two years later when Tom Love was Assistant Secretary of the United States Treasury he told me in Washington his only recommendation, because of the company's growth, had been more investment of capital and an executive who would devote his entire time to the company. He, himself, frequently had wondered why we Kempners had sold.

Ike characterized the matter as a "typical instance of where an associate's cupidity and duplicity triumphed over my own stupidity." However, Pat had gained valuable experience
and knowledge as an employee of American National Insurance Company. In 1910, the Kempner brothers organized First Texas State Insurance Company. Pat was initially a vice-president and later became president.\textsuperscript{62}

Throughout these years, a specific pattern of business practice emerged. Ike was chairman of an informal board of partners. The only active members were himself, his three brothers, and their uncle, Joseph Seinsheimer. Each son carved out his own niche in H. Kempner. The day-to-day operations of each business were the responsibility of a specific brother. Ike ran the international cotton business. Dan operated Sugarland Industries and the Merchants and Planters Compress. Lee was the family's banker. Pat took care of the insurance. While the men appeared to have a fairly strict division of labor, they made all major decisions collegially—regardless of whose area of primary concern it affected. In case of disagreement, Ike, as the oldest, functioned as the first among equals. Eliza Kempner and her four daughters, while holding equal shares in the survivorship, had no management functions. The brothers received only a fair living allowance for their services. At the end of each year, the nine survivors divided the profits equally.\textsuperscript{63}
Two series of events between 1915 and 1920 determined H. Kempner's course during the twentieth century. First, the family underwent two changes in its legal structure. It converted from a caretaker trust to a partnership. When that proved unsatisfactory, the family placed its capital in a dynastic trust. Second, the turbulence caused by World War I and its aftermath seriously affected the family business and income.

The structural modifications resulted from changed circumstances within the family. When Gladys, the youngest child, reached her majority in 1914, there was no longer any legal necessity to administer Harris Kempner's estate as a caretaker trust. Therefore, in 1915, H. Kempner terminated the survivor in community and became a partnership. This ended court supervision over company operations. It also meant that H. Kempner's financial records were no longer subject to the public scrutiny permitted through statutory auditing of the estate's assets. In exchange for control and privacy, however, H. Kempner surrendered the security against capital dissolution which was the hallmark of a trust.64

Even though all nine partners agreed in 1915 that H. Kempner must remain intact, events had already occurred which could put future pressure on family unity. Hattie had
married Henry Oppenheimer in 1903 and lived in San Antonio. Sara, wed to David Weston in 1913, had moved to Cincinnati. Then, in 1918, Fannie married Louis A. Adoue of Galveston.

Thus, by 1919, serious, though still potential dilemmas confronted H. Kempner. What would happen to H. Kempner if any of these women gave control over her share of H. Kempner to her husband? What would happen if one of the heirs—for any reason—wanted to force a partition? Such situations would compel H. Kempner either to relinquish control over some of its businesses or to sell some of its capital assets. Faced with these unpalatable alternatives, the family decided to place its capital assets in a dynastic trust.

The dynastic trust—called a Massachusetts, or Boston, trust—originated when early nineteenth century Boston families sought a way to maintain their power and wealth as well as to avoid the imposition of taxes. The trust's purpose was to provide a rational institutional base for drafting, forming, managing and perpetuating long-term business interests. It also avoided the common law "Rule Against Perpetuities," a legal restraint to prevent the entailing of estates into the indefinite future. This particular legal form seemed to fit Kempner needs almost precisely, giving them complete control, privacy, and security. Therefore, on
January 1, 1920, the Kempners converted the partnership into a Massachusetts Trust.  

The Kempner Trust was a nearly perfect example of a Massachusetts Trust. The Kempners desired to maintain their wealth and status. Tax advantages, if any, were only secondarily important since the trust would be taxed when each of the nine Kempners, who originally participated, died. The Rule Against Perpetuities was not a problem: the life of the trust was very short, extending only for twenty years. It could be renewed at the end of this time should the beneficiaries so desire.  

All property owned by H. Kempner became part of the trust. The only properties excluded were homesteads belonging to Ike, Dan and Eliza as well as some lots belonging to Lee. However, the proportions to which each beneficiary became entitled changed. Eliza deeded by gift to the children all her share of the estate in excess of one-ninth of the total. Her gift, when added to that already owned by the children gave them eight-ninths of the entire estate. Of this amount, each child then held an undivided one-ninth of the estate. Each of the nine received 5,000 of the 45,000 shares. Shares of the trust were to be held as personal property.
A successful Massachusetts trust required long run investment flexibility. *Harvard College v. Armory* (Mass., 1830) set out the duties of the trustee:

> [He] shall conduct himself faithfully and exercise a sound discretion. He is to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable outcome, as well as the probable safety of the capital to be invested.  

Trustees were to be men of business ability. Further, the phrase, "permanent disposition of funds" probably had a dual meaning: to avoid speculation as well as to invest for the long run.  

"H. Kempner," as the trust was to be known, had five trustees who held title to all its property as common law joint tenants. The trustees had "absolute discretion" to engage in agriculture, retail, wholesale, manufacture, utilities, stocks, banking, real property development, oil and gas, cotton factoring and its ancillary aspects, and "any other business which they may by amendment or addition here-to properly made by the shareholders be authorized to engage in." The trustees had no liability except for losses which resulted from deliberate malfeasance.
There were three classes of trustees: original; temporary or co-trustees; and elected. Original trustees were Ike, the chairman, Dan, Lee, Pat, and Eliza's brother, Joseph Seinsheimer. Temporary trustees, interim appointments to fill vacancies caused by death, disability or judicial removal for malfeasance or nonfeasance of duties, served only until the next annual meeting. Elected trustees were chosen at an annual board meeting, the first of which met in Galveston on June 30, 1921.\textsuperscript{72}

The typical Massachusetts trust also contained a spendthrift clause to prevent beneficiaries from squandering their shares and to bar creditors from seizing the trust's assets.\textsuperscript{73} This doctrine, set out in \textit{Broadway Bank v. Adams} (Mass., 1872),\textsuperscript{74} had one exception. A settlor could not create a spendthrift trust for himself.\textsuperscript{75}

Since the Kempners were both the trust's original settlers as well as its beneficiaries, they could not include a spendthrift clause. However, the Kempner trust contained a phrase to approximate this provision. While beneficiaries could not be restrained from alienating their shares of the trust, they could be prevented from selling them indiscriminately. If a shareholder wished to sell shares, he must first offer them to the trust itself, at current book value. If the trust declined to buy, other beneficiaries
then had the right of first refusal, again at book value. Only if neither the trust nor other beneficiaries wish to buy could the shares be sold at will. While the trust deed was quite specific about alienation by sale, it was completely silent regarding alienation by gift. Presumably a beneficiary could give shares away at his own discretion.\footnote{76}

These two provisions—the prudent investor rule and the spendthrift clause—were legal prerequisites for the effective functioning of the dynastic trust. They protected the trust from the depravations or bankruptcy of both trustees and beneficiaries. In the specific case of the Kempner women, it kept the trust free from their control as well as free from their power to vest control in their husbands.\footnote{77}

A Massachusetts trust also denied beneficiaries the power to terminate the trust, except under very limited circumstances. \textit{Clafin v. Clafin} (Mass., 1889) placed that power solely in the hands of the trustees who wielded it as representatives of the settlors.\footnote{78} Such a view represented the primacy of settlor over beneficiary interests. The trustee could be forced to allow premature termination only when two conditions were met: (a) all possible beneficiaries consented to termination; and (b) the purpose of the trust
had been fulfilled. The only real exception occurred when settlor and beneficiary joined to request termination.\textsuperscript{79}

Termination provisions of "H. Kempner" deviated sharply from this norm. In the Kempner trust, early termination required the unanimous consent of all trustees plus the "written consent of not less than two-thirds in interest of the holders of all certificates outstanding."\textsuperscript{80} This relatively liberal termination clause, when coupled to the fairly short trust life of twenty years, indicated that the Kempners felt some ambivalence about using the Massachusetts Trust. They wanted to try it, but they were also unwilling to be locked into the form for an indefinite period.

In addition to two changes in legal structure, world events, chiefly those connected with World War I greatly affected H. Kempner. When Europe went to war in 1914, American cotton became a highly prized commodity because of its use as wadding in artillery ammunition. However, in 1915 Britain declared that American cotton bound for Germany was contraband because of its suspected use in the manufacture of German munitions. The British declaration disrupted many of H. Kempner's old, non-military trading and banking connections. Nonetheless, the American cotton market boomed and H. Kempner's fortunes flourished.\textsuperscript{81}
As soon as World War I ended, H. Kempner moved quickly to restore its international business connections and to create new ones. In 1919, Ike invested in H. Nussbaum of Galveston and W. A. Lighter of New Orleans, two small firms which sold cotton to German and French spinning mills. In exchange for substantial blocks of stock in each company, H. Kempner agreed to serve as their banker and broker. The arrangement proved to be disastrous. Years later, Ike unhappily recalled the events:

I had in 1921 on our trip to Europe foolishly negotiated for account of the firm of W. A. Lighter & Company of which H. Kempner owned control, and Herman Nussbaum (joint account) a contract to sell German [and French] spinners large quantities of cotton on terms which guaranteed the purchasers against declines in the market, but gave them the benefit of any advances. Undertaking to hedge these sales in the futures market, an equally unwise proceeding, resulted in an enormous loss to us, increased by repudiation by German [and French] spinners of contracts where prices had been fixed by them. These transactions were all sponsored and handled by me and the enormous loss we sustained [was] purely my fault. Expensive litigation followed. . .with the especial persistency of Dan Kempner that deserved success. A bill was passed by our Congress, both houses allotting to us certain funds impounded and forfeited by German nationals, but the bill was vetoed by President Truman. We tried to resurrect the measure in the 1953 congressional session; succeeded promptly in the House, but only in the final hour of the Senate. To our disappointment we again
encountered a veto by President Eisenhower based on misleading and erroneous advice of the Attorney General's department.82

H. Kempner finally settled its cotton spinners litigation in 1956, after Congress passed a bill enabling the family to present its case to a U.S. Court of Claims. The family paid dearly for its efforts— not only in money, but also in time, energy and emotion.
ENDNOTES


his research on the records of Philadelphia Rabbi Isaac Leeser, a 19th century promoter of Jewish trans-Mississippi migration. Isaac Leeser "Jews in the United States - 1848," 7 American Jewish Archives (1955), pp. 82-84 was an 1848 assessment of the ethnological features of Jewish communities in the eastern and southern United States.


7. Daniel W. Kempner, "Historical Record," p. 1. I. H. Kempner, Recalled Recollections, p. 14. The two accounts were substantially similar. However, Dan had his father's rank as "sergeant" at the war's end while Ike promoted him to "lieutenant".


15. Tinsley, "Select Letters," pp. 8-11. This was not Kempner's only experience with convict labor. He also used prisoners to work on his Ellis and Plantersville farms. Kempner sold the Ellis farm to the State of Texas. It is now part of the penal system.


16. Tinsley, "Select Letters," p. 10. Kempner's desire to employ a professional manager for his business was quite consistent with contemporary emerging business practice. Samuel P. Hayes, The Response to Industrialization: 1885-1914 (Chicago: The University of Chicago Press, 1957), ch. 1 and A. D. Chandler, Jr., The Invisible Hand: The Managerial Revolution in American Business (Cambridge, Massachusetts: The Belknap Press, 1977) describe the "managerial revolution" which occurred when neither the owners of businesses nor their families had enough qualified members to provide the management personnel and skills required by complex industrial organizations. The rise of the specialized manager, with no ownership--typified in its ultimate form by Carnegie Steel--was a hallmark of the period. Harris Kempner was slightly atypical in his insistence that the the manager invest his own assets. During the twentieth century, Harris's sons deviated even further from what rapidly became the international business norm. If none of them had either the management skills for, or interest in, one of the businesses, they simply sold it.


18. Kempner invested in, and directed, banks all over Texas. For instance: Athens; Ballinger; Belton; Galveston; Gatesville; Groesbeeck; Hamilton; Marble
Falls; Mexia; Temple; Velasco; and Wichita Falls. He was a major stockholder and director in several railroads, the largest of which was the Gulf, Colorado and Santa Fe. He invested in water projects in Wichita Falls and Galveston Counties. He had extensive land holding throughout the state. However, he tended to concentrate most of his business enterprises in Galveston and the surrounding counties.


22. Two died during the 1879 diphtheria epidemic: Sidney on December 14 and Abe on December 29. Joe Clarence died March 23, 1891.


25. The Galveston Daily News, April 14, 1894. The words "Another millionaire" in the second headline of this article indicate that Galveston was home to many southern millionaires. The Strand Avenue, heart of Galveston's business district, was also known as "The Wall Street of the South." Additionally, the headline hinted that 1894 was not a particularly healthy year for the Galveston wealthy.


29. Revised Civil Statutes of 1879, Article 1645 (b)(1).
30. **Revised Civil Statutes of 1879, Article 1653.** This statute did not receive judicial interpretation until 1942. In *Forrest v. Moreno*, 161 SW2d 364 (1942), the court held that where the husband died intestate, the wife was owner, outright of one-half of the community property, not as an heir, but as a "survivor in community," and their children owned the remaining one-half of the community property as heirs of their deceased father.

31. The Panic of 1819 introduced Americans to the cyclical pattern of the modern business economy: boom; panic; and depression. During the depression which followed the Panic, many states enacted "stay" laws to protect owners of failed businesses. These laws prevented creditors from seizing various classes of both real and personal property. The Third Congress of the Republic of Texas, on January 26, 1839, passed what became known as a "homestead" law. An insolvent debtor could reserve a home for his family as well as his means of support from seizure. This provision included both real and personal property. The Constitution of 1845, enacted in anticipation of Texas's becoming a state in the United States, exempted to the head of a family a rural homestead not exceeding 200 acres or an urban homestead not exceeding $2,000 in value, excluding improvements. Further, no homestead could be sold unless the wife, if she existed, consented to the sale. The Constitution of 1869 amended the urban homestead to a value of $5,000, again excluding improvements. The Constitution of 1876 carried forward the provisions from 1869 but added that a place of business might be included in an urban homestead. It further provided that certain types of property belonging to an unmarried adult might be considered as a homestead.

32. **Constitution of Texas, Article 16, Section 32.**


35. **Revised Civil Statutes of 1879, Article 2167.**

37. Ibid., Articles 2170, 3386. Per Brown v. Seaman 65
   Tex 268 (1886), this bond was absolutely necessary.


40. Ibid., Article 2172.

41. Ibid.: powers to acquire, convey and so forth were in
   Articles 1983-1990; necessity for prior court approval
   in Article 2113; reporting requirements after
   transaction completed in Articles 3508-3510.

42. Ibid., Article 2173.

43. Revised Civil Statutes of 1879, Article 2183.

44. "H. Kempner (Unincorporated), Cotton and Banking,
   Galveston, Texas."

45. Daniel W. Kempner, "Historical Record," p. 5.

46. Ibid., "Historical Record," p. 5.


48. Ibid., p. 28.

49. Ibid., pp. 31-34.

50. Ibid., pp. 31-34.

51. Daniel W. Kempner, "Historical Record," pp. 5-6, 10.
   I. H. Kempner, Recalled Recollections pp. 35-38.

52. Harris L. Kempner, Jr. and Edward R. Thompson, Jr., "H.
   Kempner (Unincorporated): A History and Evaluations,
   (July 9, 1964), p. 3.

53. Daniel W. Kempner, "Historical Record," pp. 5-6, 10.
   I. H. Kempner, Recalled Recollections, pp. 35-38.

54. Daniel W. Kempner, "Historical Record," p. 16. I. H.
   Kempner, Recalled Recollections, p. 38.

55. Daniel W. Kempner, "Historical Record," p. 17. I. H.
   Kempner, Recalled Recollections, pp. 39-40.


61. *Ibid.*, p. 40. This incident typified the lack of rapport between two of Galveston's leading families—the Kempners and the Moodys. The persistent hostility was probably a major factor in Galveston's twentieth century decline. The citizens who had the means to control Galveston's future could not agree on what course should be followed. The animosity reached such an intensity that, in 1921, both families agreed to withdraw from active participation in city politics. While this brought some measure of peace to the city, it also robbed Galveston of valuable experience. Galveston's twentieth century course was directly counter to that of Houston where a group of wealthy and powerful men and women—Jesse Jones, M. D. Anderson, and Oveta Culp Hobby, to name only a few—agreed on what course the city should take. This group channelled substantial amounts of money and energy into developing Houston. The present relative positions of the two cities are testimony to the value of a harmonious, congenial power structure. I. H. Kempner alluded in general terms to this problem in *Recalled Recollections*, p. 57. David G. McComb, *Houston: A History* (Austin: The University of Texas Press, 1981) chs. 5-7 and Barbara F. Guidry, "Houston: Black Gold, 1945-1980," (unpublished paper, 1982) examine Houston's spectacular development after World War II.


64. Kempner and Thompson, "H. Kempner (Unincorporated)," pp. 3-4.


67. Ibid., Article III, Section 2; Article IX, Sections 1-4. I. H. Kempner, Recalled Recollections, p. 61.

68. 28 Mass. (9 Pick) 446 @ 461 (1830).


70. "Declaration of Trust," Article IV.

71. Ibid., Article V, Section 2.

72. Ibid., Article IV, Section 1; Article I, Sections 1-5.


74. 133 Mass. 170 (1872).


76. "Declaration of Trust," Article VIII.


78. 144 Mass. 19, 20 NE 454 (1889).


80. "Declaration of Trust," Article XI.


82. I. H. Kempner, Recalled Recollections, p. 62.
CHAPTER II

The twisted threads of circumstance which began in 1919 cost the Kempners dearly, generated deep frustration and animosity, and left a legacy of profoundly bitter memories. Ironically, the year 1919 opened in an air of confident and cordial expectation. The price of raw cotton, $24.30 per one hundred pound bale, was at nearly an all-time high. Eager consumers on both sides of the Atlantic, tired of wartime shortages in everything from clothing to paper, purchased finished goods as quickly as they were available. American spinning mills worked at, or near, full capacity. Operators of European spinning mills, anxious to become part of the international economic community again and to take advantage of the boom, also needed vast supplies of raw cotton.

In April, 1919, Ike invited William A. Lighter and Herman Nussbaum to Galveston to discuss how best to profit from this thriving cotton market. The three men, all successful cotton brokers, each had something the others needed. Ike had capital reserves and a vast network of American agents who could supply him with all the cotton
he could sell. He also held memberships on the New York and Chicago Cotton Exchanges, the only two markets in the United States which could conduct transactions in cotton futures. Lighter and Nussbaum dealt solely in spot, or actual, cotton sales and both had developed strong European markets. The men hoped to establish a mutually beneficial business arrangement. H. Kempner would be the supplier; Lighter and Nussbaum, the salesmen.¹

Lighter, originally from Cincinnati, was a college trained linguist who had originally studied for the Catholic priesthood. Soon, however, he saw greater opportunity for self-advancement in commerce than in the classics. He moved to New Orleans about 1898 and soon established himself as a respected, though aggressive, cotton merchant. Nussbaum had been one of Ike's childhood friends. His father had worked for Harris Kempner during H. Kempner's formative years. Nussbaum, like Lighter, had a solid reputation among cotton men.²

Ike, Lighter and Nussbaum were good friends. The three men were on a first name basis. Their correspondence often began "Dear Bill" or "My dear Ike" and invariably included information about personal matters, family accomplishments or other trivia. All anticipated a long, congenial, and fruitful association.³
The final arrangement, to run from May 1, 1919 to April 30, 1922, and later extended till 1924, superficially left each firm completely independent of the others. Ike acted as the solebroker and banker for the other two. Lighter, for agreeing to purchase substantial amounts of cotton from Ike, received the use of Kempner's two seats on the New Orleans Cotton Exchange for twenty years. Then, the two seats would be Lighter's. Nussbaum received similar terms.  

In fact, however, the relationships between H. Kempner and the other two firms were substantively—and privately—very close. H. Kempner owned sixty per cent of both William A. Lighter & Co. and the Herman Nussbaum Company. As the majority partner in each firm, H. Kempner received sixty per cent of their annual profits. Kempner's accountant, R. I. Mehan audited Lighter and Nussbaum monthly and ordered changes to conform to Kempner's books when discrepancies existed.  

H. Kempner had good reasons for insisting that the close relationship among the firms remain secret. First, H. Kempner hoped to avoid open conflict when its foreign agents, such as Pierre Chardine in Le Havre or Ernst Heller in Zurich, competed directly, though unknowingly, with Lighter's and Nussbaum's European agents. Second, if
Lighter or Nussbaum went bankrupt or received unfavorable judicial decisions, then H. Kempner's capital might be vulnerable. Third, the connection directly violated the Clayton Anti-trust Act of 1914 which prohibited interlocking directorates. Fourth, H. Kempner's intent to create a Gulf Coast cotton monopoly through secret subsidiaries violated the Sherman Anti-trust Act of 1890 which prohibited combinations in restraint of trade.6

For these reasons, Ike and Dan always denied that H. Kempner owned any interest, controlling or otherwise, in Lighter or Nussbaum. When Waldemar Hapke, Lighter's agent in Europe, boasted to other cotton salesmen that he had sold 40,000 bales of cotton for H. Kempner and that Dan had given him a car for business use, Dan angrily warned Lighter:

We resent these bragadoccio [sic] remarks of Mr. Hapke very much. They are wholly unnecessary for business; they reflect upon our own agents and make them dissatisfied. . . Mr. Hapke's remarks are wholly not true.7

Dan also instructed Lighter to inform Hapke that he must represent only Lighter and Nussbaum,

without reference or mention of H. Kempner's name, or if there is no other remedy for this disease of Mr. Hapke's, we shall simply have to adopt the cure of severing our relations with the firm of W. A. Lighter & Co.8
Lighter reacted immediately, chastising Hapke for the "embarrassment" and "annoyance" which his actions had caused:

You must understand that the firm of H. Kempner is an entirely different organization than this firm, and I want you to pay particular not that you must not, under any circumstances, use the name of H. Kempner in any WAY, SHAPE, OR FORM in your business transactions.

Kempner is very much incensed, and properly so, and he means every word he says, when he tells me that if this constant misuse of his name is not stopped they will have to withdraw their interest in this firm.

Hapke apparently heeded the advice. Nothing further came from this particular incident.

A bon vivant with a taste for fine food, fast cars, and beautiful women, Hapke was Lighter's and Nussbaum's primary European agent. Through Georges Duewell, a cousin who was general manager of Mechanische Baumwollspinnerei und Weberei Kempten at Kempten, Germany, Hapke had made extensive contacts with the most important firms in the south German and Alsatian spinning industries. The German companies were: Baumwollspinnerei Kolbermoor at Bayern; Konrad Hornschuch A. G. at Unterurbach; Spinnerei Forchheim at Forchheim; Kulmbacher Spinnerei A. G. at Kulmbach; Baumwollspinnerei Am Stadtbach at Augsburg; Baumwollspinnerei Otto Schoen at Zwickau; Gebruder Laurenz
at Ochtrup; Suddeutsche Baumwolle Industrie A. G. at Kuchen; C. A. Leuze at Owen-Teck; and F. C. Byerlein at Bayreuth. Those in Alsace were: Filature and Tissage Jean Kiener Fils, at Gunsbach, Haut Rhin; Etablissements Frederic Jacquel at Natzwiller, Bas Rhin; Filature and Tissage G. Marchal Fils at La Claquette-Rothau, Bas Rhin; and Etablissements Bourcart at Montbeliard, Doubs.10

These mills, acknowledged leaders of the German spinning industry, had impeccable reputations. Kuchen, Stadtbach, and Kolbermoor plus its subsidiary, Kempten, were public corporations. The rest, all generally over fifty years old, had been operated by successive generations of the founder's family. Three—Hornschuch, Forchheim, and Kulmbacher—were owned and operated by Mr. and Mrs. Fritz Hornschuch. Several had two or more factories. Most utilized large work forces and multiple work shifts. All produced substantial amounts of high grade thread and, therefore, required constant supplies of quality cotton.11

Waldemar Hapke linked the factories to Lighter-Nussbaum. His contract required him to work solely for Lighter or Nussbaum. This implied that Hapke's loyalty belonged exclusively to them as well. His salary, paid as draw against commission, was $416.66 monthly plus reimbursement for current travel expenses. He also received
1% of all business accepted by Lighter and Nussbaum if the total commission exceeded his draw of $5,000. Hapke was personally responsible for paying any sub-agents he hired. Hapke used two: his cousin, Georges Hochgreve, and Edward Dyckhoff. Hapke's employment could be terminated by cable or mail any time his methods or conduct proved unsatisfactory.\textsuperscript{12}

In performing his job, Hapke had very little latitude. He could not represent, or introduce his buyers to, any other brokers. He could buy and sell only upon specific confirmation from his principals. The terms for all sales were to be Cost + Import Fee (C.I.F.) and Cash On Delivery (C.O.D.). Such tight control by principal over agent was necessary because, as Hapke's contract with Lighter explicitly specified, "Present conditions require that at no time should safety and conservatism be sacrificed for volume."\textsuperscript{13}

The "present condition" which required such a conservative approach during the cotton boom was Germany's financial instability. Germany had financed its war effort through loans and increased currency supplies rather than taxes. Between 1914 and 1918, the mark lost 50% of its gold parity and the exchange rate decreased from a ratio of 4:1 to 2:1 marks per dollar. The absence of normal market
activity and pervasive government regulations hid this decline from most Germans.  

The Treaty of Versailles brought peace to the world and exacted a measure of vengeance on Germany. The country had to cope not only with the psychological humiliation of unexpected defeat but also with the territorial losses and financial drains imposed by the victorious allied forces. Germany, which had seized Alsace and Lorraine in 1871, had to return them to France. German war loans had to be paid, not repudiated. Reparations required the payment of $152 billion in gold marks for injuries to Allied civilians, damage to their property and pensions for Allied combatants or their survivors.  

Despite a payment schedule which cut more than one-half the total through a delayed funding scheme, the sum was still far too high for Germany to pay from its $2.4 billion in gold reserves. German banking and business interests resisted every proposed tax measure, arguing that the government, which had waged and lost the war, must pay its own bills. Germany finally met its obligations by printing gold marks. This escalated inflation and caused further decline in the mark to dollar ratio. By July, 1921 it had sagged to 77:1 and by July, 1922, it had slumped to 493:1.
The mark finally collapsed in November, 1923, after reaching 4,200,000,000,000:1 (4.2 quadrillion to one).16

The galloping inflation impoverished the German middle class and devastated the lives of those on fixed incomes. It ruined the values of savings accounts, insurance policies, and annuities. Many small businesses went bankrupt. The old German import houses and mills, unable to accumulate profits during the war, had their capital sharply reduced by the mark's decline. International transactions were nearly impossible in the absence of a stable exchange medium. However, for those who had the wit to master the rules of surviving in this world of wildly fluctuating values, these were congenial and lucrative times.17

Ike and Dan were such men. They wanted to continue selling cotton to the German spinners. However, the mills had very little liquid capital and the wild inflation made financing difficult. Ike and Dan were unwilling to deviate from industry norms by extending credit. They sought a way which would still permit C.I.F.C.O.D. sales. They found it in the conversion contract.18

Although not standardized, the conversion contract had been used for many years by cotton futures salesmen in Europe. The form used by the Kempners beginning in 1921 gave each mill three options. First, it could take delivery
of actual cotton. Second, it could convert the contract's due date forward to a future month by paying a brokerage fee of 25 points ($1.25) per bale. Third, it could liquidate the contract, taking a profit or paying a loss depending on market conditions, within twelve months from the contract date. Brokerage fees for final contract close out were 50 points ($2.50) per bale. No money actually went either to Lighter and Nussbaum or to a spinner until the entire contract was finally closed. Neither side had to put up margins. However, if Lighter and Nussbaum pledged margins against price increases, the spinner then paid interest at the prevailing rate.\textsuperscript{19}

In the steadily rising futures market which existed from 1919 through 1924, conversion contracts enabled the German spinners to purchase, and pay for, cotton with American dollars. In practice, each spinner contracted to purchase more cotton futures than his mill could possibly use. At the time he needed cotton, he then exercised at least two of his options. He sold excess futures to those needing cotton. With these profits, he then had American dollars with which to buy actual cotton for use in his own mill. If there were still futures left unsold on the contract, these could be rolled over to a future date or liquidated as windfall profits.
Lighter and Nussbaum also profited in several ways. They continued to sell American cotton. They also earned substantial brokerage fees as the spinners exercised the conversion options. Lighter and Nussbaum effectively continued to sell cotton C.I.F.C.O.D. since the contracts eliminated any necessity to devise long-term credit plans.

This approach was both pragmatic and, initially, successful. However, Ike and Dan knew from the outset that if a conversion contract became subject to judicial interpretation, either in the United States or in Europe, it might be held invalid. 20

The conversion contract specified on its face that its provisions complied with the rules and regulations of the New York Cotton Exchange, the commodities market on which these contracts were to be executed. However, striking disparities existed between the contract's provisions and the Exchange's rules. Specifically, the conversion contract failed: (1) to follow the prescribed legal form; (2) to use United States Cotton Futures Act grade specifications; (3) to permit either party to call for a margin depending on market conditions; (4) to state that it was made in compliance with the US Cotton Futures Act of 1916 or to charge an excise tax of 2 cents per pound; and (5) to adhere to prescribed brokerage fee scales. 21
The potential difficulties with German law were equally serious. While the cotton futures trade was legal, sections 762 and 764 of the German Civil Code prohibited gambling and section 138 rendered all speculative contracts illegal.\textsuperscript{22} Futures contracts, therefore, might be legal if employed to assure supplies of actual cotton or completely void if used to speculate. Since the conversion contracts combined both usages, there was good reason for worry. Dan confided his fears to Lighter:

I don't think Mr. Nussbaum is very enthusiastic over the sale of contracts. He fears that is too much of a gambling proposition; in other words, that when your friends are not in on the buying side, they will be on the selling side, and ultimately will make losses which will hurt them, and in the meantime constantly tie up a world of money. Mr. Nussbaum is usually ill prepared to do this, as he carries a pretty good stock of cotton and has to lean on his banks very heavily at times. Personally I think the whole thing is speculative, whether they are on the buying side or the selling side, and we must realize that they are gambling when they go into these conversion contracts. I can't see any difference between one side or the other.\textsuperscript{23}

Dan's interchangeable usage of "speculation" and "gambling" identified him as more conservative than many of his contemporaries. W. Hustace Hubbard, a partner in the New York cotton brokerage firm of Hubbard Brothers,
semantically distinguished speculation, as considered risk, from gambling, as inordinate peril. This differentiation enabled Hubbard, and many others, to rationalize investment practices of the 1920s as normal and safe.

For the time being, however, Dan's incisive analysis, prophetic though it may have been, was only one factor among many to be considered. Dan relied on the extensive cotton trade information he received daily plus his own business acumen to keep the risks within acceptable limits. So long as the cotton prices continued to rise, there was little chance that the contracts would be challenged.

By early 1924, the market had reached $35.40 per bale and produced sufficient legitimate profits to satisfy all participants. Hapke's commission, 1% of the total annual contracts which averaged $5 million during the early 1920s, often exceeded $50,000 per year.

The ease with which mere paper transactions brought financial solvency to the mills suggested that an astute—and greedy—individual could also become financially secure, despite Germany's unstable political and economic milieu. By corrupting the conversion contract to pure speculation in cotton futures, an investor could amass substantial unearned profits at little risk. Without Ike's or Dan's knowledge and probably without Lighter's, Hapke
engaged in this practice. He and Hochgreve used conversion contracts negotiated in Kempten's name for their own profit. Several mill owners and managers, particularly Duewell at Kempten, Jordan at Kolbermoor, and Schoen at Schoen, followed suit, depositing their illegal gains in Swiss bank accounts.26

In the midst of this enthusiastic profit-taking, came the first small threads of dissension and disharmony which began to unravel the finely woven fabric of friendship and accord. Beginning in late 1923, many spinners began to complain about the quality of cotton shipped by Lighter and Nussbaum.27 Hapke wrote several letters imploring his principals to send the spinners the exact grade of cotton they had purchased:

I think you are getting some very rotten cotton, which might be very useful for tenders in the futures market but not for continental spinners who are really needing the quality they have bought. . . .[I am] asking you from the bottom of my heart to . . . ship all cotton . . . in a real first class quality. . . . I am not willing to ruin my name as a first class cotton merchant, who is entitled since years to receive full confidence and best business friendship from his clients.28

Hapke cited Schoen's need for "creamy staple cotton"29 since that mill spun only one quality of thread. He noted Kulmbacher's unhappiness and warned that unless better
cotton was forthcoming, Lighter and Nussbaum stood to lose nearly 50% of its German business. Lighter's usual response was,

... all of us have had more than our share of trouble this year in getting decent cotton—for it simply hasn't been grown, and you must tell your spinner friends that we cannot make staple where there isn't any.

He advised Hapke to inform the spinners they simply would have to accept one bad year among all the good ones.

Many reasons, chiefly a lack of rain, caused the 1922-1924 harvests to be both inferior in quality and unusually small in size. A New York "bear clique" seized control of the cotton futures market. The "damned manipulation" by six New York Cotton Exchange stockholders—Anderson Clayton, Harris Irby, Weatherford Crump, Livermore, Sprunts and Owens—made the market highly speculative and unstable. Lighter feared that a market decline was imminent. If it occurred, it meant the loss of futures profits as well as the problems associated with poor cotton. He instructed Hapke to suggest that the spinners take their profits and retire from the futures market until conditions stabilized.

A few spinners initially heeded the advice. But, none permanently abandoned the futures trade. All believed the
setback was temporary. Unfortunately, the cotton market never recovered. Instead, it began a slow, inexorable decline which saw prices fall from their 1924 high of $45.50 per bale to less than $10.00 per bale by 1928. Slackening consumer demand, in addition to poor harvests and market manipulation, contributed to the depression.36

These futures losses made Ike and Dan increasingly aware of the unlimited liability which H. Kempner had as a partner in the Lighter and Nussbaum companies. When the partnership agreements with Lighter and Nussbaum expired on April 30, 1924, Ike and Dan declined to renew them. Instead, they directed that each company become a corporation, Lighter in Louisiana and Nussbaum in Texas. H. Kempner was the majority—and very nearly the sole—stockholder in the other two corporations. Each shareholder signed the quitclaim affidavit on his stock certificate at the time of issuance. The signature was notarized, though left undated, and the new owner's name was left blank. Ike, who kept all the stock certificates in H. Kempner's vault, had the power to convene a directors' meeting for either corporation at any time and vote Lighter or Nussbaum out of office. Further, by entering the name of a new shareholder and dating the quitclaim clause, Ike
could terminate any existing stockholder's interest in either W. A. Lighter or Herman Nussbaum.\footnote{37}

Ike and Dan’s prudent move to protect H. Kempner came not a moment too soon. As the cotton market declined through 1924, losses mounted and tempers shortened as the spinners continued to buy high and sell low. Many spinners negotiated bank loans to cover their losses. More than once, Bourcart sent Lighter bank drafts that were not fully covered by funds when it could not make timely payments. Letters of instruction and orders of confirmation showed a strained, increasingly formal note. They were less cordial, rarely included personal information and generally began “Dear Mr. Kempner” or “My dear Mr. Lighter.” The days of flush affluence and easy informality were over.\footnote{38}

Hapke, long the catalyst of mutual prosperity for the mills and their American cotton brokers, became instead the solvent which reduced them all to common disaster. From 1923 to 1925, he repeatedly compromised the bounds of his agency. When, in July, 1924, the market made a small gain, Lighter and Nussbaum pleaded with Hapke to close out all the spinners “at small profits” because the advance was merely temporary. They directed him to accept orders only for actual cotton.\footnote{39} However, in open defiance of
instructions from his principals, Hapke continued selling futures to the spinners. He justified his actions because,

During the last year Mr. Lighter personally explained to the spinners that they should not bother about their futures as we would be capable to look after their interests and protect our friends against losses as much as possible. . . . practically our futures contracts are the financial help for our contracts of actual cotton. . . . no spinner would forget his losses which might have occurred by your sudden decision to close his contracts shortly in the moment when he might have had a substantial loss. . . . You would have no chances to continue a sound actual cotton business and also future contracts.

Lighter responded strongly:

. . . you must follow our instructions. . . . we are not going to accept another bale of futures until the present lines are liquidated; therefore don't send us any orders--for they are only going to make serious trouble.

Three days later, without even waiting for Hapke's reply, Lighter wrote again:

For your own information, I wish to say that Mr. Kempner has lately written me a very strong letter about the futures and has told me that never again will he ever consent to us taking one bale of futures if we ever get out of the mess we are in now.

Hapke also wanted to guarantee the spinners that the contracts would be extended from 12 months into the
indefinite future. Lighter refused, citing American law which required liquidation of futures contracts within twelve months. Hapke, however, ignored Lighter's rejection and verbally assured the spinners that the contracts would be extended. He wrote Lighter to justify his actions:

[You and Nussbaum] must give us the chances to sit on our contracts until the time of a possible liquidation with a small profit or at least without any losses. But if you were forcing them out after twelve months from the first date of contract we shall never be able to do a single bale of cotton with such spinners who are suffering losses by closed out contracts.

Hapke promised the spinners reductions in transfer and liquidation fees as a way to lessen their losses. Nussbaum angrily responded,

Our contract stipulates that each and every transfer pays 25 points and the final liquidations 50 points, and these conditions have not been deviated from an we have no knowledge of any agreement having been made whereby they are to be charged only 10 points on transfers.

Hapke extended credit to the spinners, giving them ninety days after the cotton arrived to make payment. Lighter was furious:

You have evidently concluded to do as you please on this. . .and you had absolutely no right whatever to sell on any other basis except "cash on arrival.
[I am] charging your account with 15 points on this sale.

Despite all their rhetoric, Lighter and Nussbaum ultimately confirmed Hapke's oral alterations. As honorable businessmen with reputations to protect, they felt bound to back their agent. For two years, Hapke and his principals continued this pattern of post ratification of contractual changes. While Lighter and Nussbaum could not control their agent's actions, they did deduct the losses from his commissions. They refused to give Hapke any advances and declined to lend him the capital to invest in a mill of his own. When spinners did liquidate contracts profitably, Lighter and Nussbaum applied the gains against existing losses. Hapke carped about this practice, angrily complaining that the mills were entitled to their profits. Lighter replied that only a "jack-ass" would send the profits to the spinners while absorbing the losses.

Hapke, on behalf of the spinners, also complained about cotton quality, bale weights, insurance fees, freight costs, prices, competition from H. Kempner's agents, storage fees, interest rates. Lighter and Nussbaum had one solution to all Hapke's complaints. They first offered to have the issues arbitrated on the Bremen Cotton Exchange. Then, without waiting for a referee's decision, they invariably
capitulated to Hapke's demands. The shaky legal status of the contracts necessitated this approach.\textsuperscript{50}

By the end of 1924, Dan was deeply concerned about the mounting losses. He told Lighter that he

\[ \ldots \text{prefer[ed]} \text{ to discontinue his interest in W. A. Lighter and Co. rather than accept one other bale of futures.} \textsuperscript{51} \]

Lighter communicated this firmly to Hapke while reminding his agent that he must follow instructions: there were to be no more futures contracts and the futures that still existed were to converted as rapidly as possible into actual cotton. Lighter, however, did not follow Dan's instructions to the letter. He told Hapke that the contract life could be extended if the spinners put up cash margins of $10.00 per bale to cover existing losses and agreed to increase them to protect Lighter-Nussbaum against additional market declines. Any spinners who could not fulfill their contractual obligations without whining and complaining, should find another source for cotton.\textsuperscript{52}

By the end of 1924, Lighter, Nussbaum, and Hapke were under constant fire. The spinners insistently solicited Hapke to obtain more favorable terms. Dan pressed Lighter and Nussbaum to insure that they did nothing foolish. In hopes that face-to-face meeting with the spinners would
bring a peaceful end to the escalating difficulties, Lighter planned a trip to Europe early in 1925. The hope proved delusive. George Hochgreve confessed to theft and stupidity. Otto Schoen repudiated all contractual liability for his futures losses. In the wake of these events, a full generation passed before H. Kempner settled its claims against the European cotton spinners.
ENDNOTES


3. See all correspondence, 1919-1923.

4. Daniel W. Kempner to W. A. Lighter, May 17, 1921.

5. As examples: Daniel W. Kempner to Francis Hurst, Secretary of W. A. Lighter and Co., March 22, 1922; Joseph Seinsheimer to W. A. Lighter, May, 1922 and August 24, 1922; R. I. Mehan to W. A. Lighter, October 17, 1922.

6. Daniel W. Kempner to W. A. Lighter, April 8, 1922; Confidential memo, June 7, 1941. For the boards of directors of the Lighter and Nussbaum corporations, see footnote 36 below.

7. Daniel W. Kempner to W. A. Lighter, April 8, 1922.

8. Ibid., April 8, 1922.
9. W. A. Lighter to Waldemar Hapke, April 10, 1922.


11. Ibid.

12. W. A. Lighter to Waldemar Hapke, September 15, 1921; clarified by subsequent undated letter between the two men. Renewed, W. A. Lighter to Waldemar Hapke, September 6, 1922.

13. Ibid.


16. Craig, Germany, pp. 448-450. On page 450, Craig charts the mark's decline:

Dollar Quotations for the Mark;
Selected Dates, 1914 and 1919-23
(monthly averages)

<table>
<thead>
<tr>
<th>Month</th>
<th>Quotation</th>
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<tbody>
<tr>
<td>July, 1914</td>
<td>4.2</td>
</tr>
<tr>
<td>January, 1919</td>
<td>8.9</td>
</tr>
<tr>
<td>July, 1919</td>
<td>14.0</td>
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<tr>
<td>January, 1920</td>
<td>64.8</td>
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<tr>
<td>July, 1920</td>
<td>39.5</td>
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<td>January, 1921</td>
<td>64.9</td>
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<tr>
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<tr>
<td>January, 1922</td>
<td>191.8</td>
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<tr>
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<td>493.2</td>
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<td>January, 1923</td>
<td>17,972.0</td>
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<tr>
<td>July, 1923</td>
<td>353,412.0</td>
</tr>
<tr>
<td>August, 1923</td>
<td>4,620,455.0</td>
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<tr>
<td>September, 1923</td>
<td>98,860,000.0</td>
</tr>
<tr>
<td>October, 1923</td>
<td>25,260,208,000.0</td>
</tr>
<tr>
<td>November 15, 1923</td>
<td>4,200,000,000,000.0</td>
</tr>
</tbody>
</table>

17. Craig, Germany, pp. 450-456; Stolper, German Economy, pp. 88-89.

18. According to Fleming, "Growth of Anderson, Clayton," p. 8, Anderson Clayton perceived the same problems. However, in contrast to H. Kempner, it . . . contemplated, with some misgivings, the probability that effective distribution to the mills might require some measure of credit to some of the mills after delivery of the cotton (p. 9).

19. Appendix A: Sample Contract.

20. I. A. Kempner to W. A. Lighter, August 21, 1923; Daniel W. Kempner to W. A. Lighter, October 25, 1923.

By-laws 33, 49(a), 49(b), Rule 8; US Cotton Futures Act of 1916, Sections 2, 5, 6.

22. The German Exchange Law of 1908, Sections 50-61, defined the legitimate futures trade as legal. The
German Civil Code, section 762, made gambling or speculative contracts illegal. Section 764 required that the intent to gamble be present at the time a contract was made and either should or could have been known to the other side. Section 138 of the same code specified that illegal contracts were unenforceable.


25. W. A. Lighter to Attorney Weisflog, September 9, 1927.


27. Schoen, Kulmbacher, Kuchen and Leuze complained regularly. Examples are found in: W. A. Lighter to Waldemar Hapke, October 31, 1923, July 15, 1924, and September 15, 1924; Waldemar Hapke to W. A. Lighter, October 30, 1923, and November 13, 1924; Waldemar Hapke to W. A. Lighter and Herman Nussbaum, September 2, 1924.


29. Ibid., August 7, 1924.

30. Ibid., August 7, 1924.

31. W. A. Lighter to Waldemar Hapke, February 5, 1924.

32. Ibid., February 5, 1924.

33. Ibid., February 21, 1924.

34. Waldemar Hapke to W. A. Lighter, February 28, 1924.

35. W. A. Lighter to George Hochgreve, February 21, 1924; Waldemar Hapke to W. A. Lighter, February 28, 1924; W. A. Lighter to Waldemar Hapke, February 289, 1924, citing cable instructions of November 29, 1923.

36. W. A. Lighter to Waldemar Hapke, February 28, 1924.

37. Incorporation of W. A. Lighter and Company: W. A. Lighter, President; Francis Hurst, Secretary. Stock Certificate Shares Owner
Bertig Brothers belonged to Dan's in-laws. Certificates 7 and 9 are missing. W. A. Lighter, Jr., assigned his share to Ike on November 19, 1924. Charles G. Buhmann, about whom the files are entirely silent, purchased his 329 shares on March 29, 1928. He was not involved with W. A. Lighter and Co. during the catastrophe period.

Incorporation of Herman Nussbaum and Company: Herman Nussbaum, President.

<table>
<thead>
<tr>
<th>Stock Certificate</th>
<th>Shares</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2000</td>
<td>Herman Nussbaum</td>
</tr>
<tr>
<td>2</td>
<td>1990</td>
<td>Joseph Nussbaum</td>
</tr>
<tr>
<td>3</td>
<td>10</td>
<td>Charles G Buhmann</td>
</tr>
</tbody>
</table>

Both Joseph Nussbaum and Charles G. Buhmann endorsed their shares to I. H. Kempner.

38. See all correspondence from this period, particularly W. A. Lighter to Waldemar Hapke, August 7, 1924.


40. Waldemar Hapke to W. A. Lighter, August 22, 1925.

41. W. A. Lighter to Waldemar Hapke, September 15, 1924.

42. Ibid., September 15, 1924.

43. Carl Speth to Herman Nussbaum, July 9, 1924.

44. W. A. Lighter to Waldemar Hapke, July 31, 1924.

45. Waldemar Hapke to W. A. Lighter, September 27, 1924.
46. Herman Nussbaum to Waldemar Hapke, June 3, 1924.

47. W. A. Lighter to Waldemar Hapke, October 1, 1924.

48. Ibid., July 8, 1924 and twice on October 1, 1924.

49. W. A. Lighter to Waldemar Hapke, August 28, 1924.

50. As examples: W. A. Lighter to Waldemar Hapke, January 29, 1924, February 26, 1924, July 15, 1924, September 9, 1924, November 13, 1924, November 13, 1924, and December 4, 1924; also Waldemar Hapke to W. A. Lighter, September 2, 1924.

51. W. A. Lighter to Waldemar Hapke, December 2, 1924.

52. W. A. Lighter to George Hochgreve, November 5, 1924.
CHAPTER III

As 1925 opened, the international cotton market continued to decline. Between the Kempners and Lighter-Nussbaum, mere civility replaced cordiality and open concern supplanted confidence. Nonetheless, Lighter-Nussbaum continued to sell cotton to the spinners through Hapke and his sub-agent, Hochgreve. All hoped for a market recovery to restore high profits and reestablish the former harmony. They also tried to resolve existing controversies through compromises. The hopes proved delusions and previous disagreements became mere preludes to disaster.

The first crisis occurred when George Hochgreve confessed his misdeeds. The second arrived when Otto Schoen refused to honor his conversion contracts, preferring the risk of litigation to the reality of bankruptcy. Both men paid high prices for their actions, enduring scorn from social peers and suffering disgrace among business associates. Each finally escaped this painful reality and salvaged his honor through suicide.

Hochgreve's difficulties began in November, 1923. He purchased futures for himself, using a conversion contract
executed in Kempten's name although without the mill's consent. The futures steadily lost value. When the contract matured in March, 1924, at a substantial loss, Hochgreve could not to meet his debts. He confessed the forgery to Hapke and George Duewell, Kempten's manager. Hapke agreed to support his cousin; Duewell refused. Hochgreve beseeched Duewell to change his mind, threatening blackmail and predicting that:

...there may be the most disagreeable consequences for all the interested parties. Therefore, I beg you again to acknowledge the contract.

Hochgreve concocted an alibi to protect his own reputation. He planned to inform Lighter that he had purchased the futures for Kempten. However, concerned for Duewell's declining health, he did not tell the mill manager about the purchase or the subsequent large market losses. Only when Hochgreve could no longer cover the losses personally, had he found it necessary to involve the ailing mill manager. Hochgreve, who needed Duewell's support and acquiescence for his plan to work, assured Duewell that "I am convinced that Mr. W. A. Lighter will personally understand my reasons."² If Duewell found this course disagreeable, Hochgreve alternatively proposed that Duewell ratify the contracts only
pro-forma, in order to give me an opportunity to report all particulars to America. Please help me in this affair and I shall do my utmost, supported by Mr. Hapke, to get you out of these contracts without loss.

Duewell rejected both options. In August 1924, after refusing repeatedly to aid Hochgreve, Duewell retired from Kempten for health reasons. Duewell's successor at Kempten, Albert Heidenreich, was unaware of the disputed contract and Hochgreve found it prudent to keep the information from him. Unfortunately, the market continued to lose ground and Hochgreve's losses continued to rise. In May 1925, events came to a head when Lighter requested a complete audit of the Kempten and Laurenz accounts. Hochgreve decided to brazen the matter through, even without Duewell's support. On May 26, he wrote Lighter a lengthy letter:

. . . I have to give you the full truth and then leave you to decide whether I have done utterly wrong or if there is at least some excuse left for me.

He then recounted the tale he had invented the previous year, embellishing it with substantial, though fictitious, detail. Throughout the recitation, Hochgreve steadfastly maintained his innocence of wrongdoing and proclaimed his absolute loyalty to Lighter.

Before closing the letter, Hochgreve confessed another substantial error:
As to Laurenz, yesterday I received facts which proved that my fears regarding this man are only too well founded. He introduced himself to me. as the spinner's son and partner and since last night I know that I have become the victim of an imposter in whose cleverly laid net I bet many other fools like me have fallen. He never gave me any cause for doubting his personality, especially not when on telling him that further transfers would be possible only against margins, he at once agreed and paid me $20,000 in notes as security. As since then I have not heard from him I became anxious and last night that at the Ochtrup mill there is no son and partner at all of the name of Bernhard Laurenz. I now understand why he always shook me off whenever I mentioned the desire of paying him a visit at the mill. I have been foolish by my trusting a man who absolutely looked what he pretended to be and I have seven to bear the consequences.

Hochgreve asked Lighter for time to pay off the contracts. He said that he had suffered great personal pain because of his actions and,

last night I felt like doing what any man would do under such circumstances, as my life now seems to be worthless with no light at all in the future.

On May 30, a "disturbed" and "depressed" Hochgreve met Hapke in Lucerne. Hapke advised his cousin to meet Lighter at Saarow-Mark the following week and to confess completely. Less than a week later, on June 3, Hochgreve
pathetically divulged the truth about Kempten in a letter sent to Nussbaum in Galveston and to Lighter in Munich:

. . .I entreat you to judge me kindly as I can only admit that up till now I don't understand myself how I could possibly do a thing like that after having been leading a stainless life's record so far. I can only plead [with you] to be lenient with your judgment as I have been temporarily insane. The strain on my brain has been too much and the deadly anxiety then led me on to it. I have to account for the 200 bales first bought for account of Kempten which Mr. Duewell kept for himself. . . and which he liquidated through me at 23.80 for. . . March, paying me about $8800. . . As the remaining 1000 bales of the Kempten contract had not been acknowledged. . . I kept this money trusting to find a way of liquidating the total contract. When now your margin calls became due, I in my deadly anxiety with my mind surely gone out of order hedged the contract and the market going against the hedge, I lost about $9000 and paid it with the above mentioned money. If the strain that had been on my brains had not turned my mind completely, I would have remembered that this money did not belong to me. 10

Hochgreve still maintained that he had been duped by an imposter claiming to be Laurenz's son. He again offered to pay the losses, if Nussbaum and Lighter would give him sufficient time. 11

Lighter, Nussbaum and the Kempners were furious. They immediately discharged Hochgreve for his indiscretions, sued him to recover the embezzled $9,000, and filed a complaint
with the Criminal District Attorney in Bremen against the
unknown forger of the Laurenz contracts. Lighter was
skeptical about whether Hochgreve had really been duped. He
wrote Max Bulling, the attorney retained to press the civil
claims against Hochgreve:

The prosecuting attorney has our
declaration in the matter, and has also
a photograph copy of the contract. It
appears to us that in examining
Hochgreve, he should have gone deeper
into the matter as to who actually
signed this contract.

John Neethe, the Kempner's Galveston attorney, believed
that Hapke may also have been actively involved in the
swindle. On August 10, 1926, Neethe bluntly wrote Hapke
that,

To me, the correspondence shows that
either with or without your knowledge
this was a speculation, either for the
joint account of Hochgreve and Duewell,
and maybe others whose names are not
disclosed, or of Duewell alone.

Regardless of what had happened, Neethe's first priority was
to recover the losses. He notified Kempten and Laurenz that
the mills were expected to honor contracts made in their
names. When both mills refused, Neethe counselled the
Kempners not to sue. German court costs, particularly the
bonds required from foreign plaintiffs, were almost
prohibitively expensive. Further, the probable verdicts in
lawsuits against Kempten and Laurenz were doubtful. Neethe discouraged the Kempten case because the evidence tended to show that Duewell, if he had acted at all, had done so in his individual capacity when contracting for the disputed cotton futures. Since Duewell, personally, had no need for actual cotton, the contracts were purely speculative and, therefore, void as violations of Civil Code sections 762 and 764. However, Neethe advised that pressure be kept on Kempten, in hopes of reaching a compromise settlement.¹⁵

Neethe urged Dan to take the position with Kempten that

\[ \ldots \text{Duewell acted within the purview of his authority for the mill in giving these orders.} \ldots \text{[No] German court will hold that a director in charge of a mill can give orders in the name of the mill and that when losses occur the mill should escape responsibility on the ground that its records failed to show the orders so given.} \]¹⁶

Neethe also believed that it was impossible to impute liability for the Laurenz contracts to the mill since the signer could not be identified. He advised Dan not to waste money, time and energy in pointless litigation.¹⁷

Because the Kempners had no solidly actionable cause against the mills, they charged the losses against the next likely source for recovery: Hapke. Since Hapke was directly responsible for Hochgreve's, his sub-agent's, actions,
Neethe recommended that the entire $115,000 loss be charged against Hapke's commissions.¹⁸

The Kempners agreed and communicated their decision to Hapke. Hapke could not pay such a large sum. His own financial position, because he had also been speculating in futures, was very precarious. He had mortgaged everything he owned to cover his futures losses. He had asked his principals for assistance. In May, 1926, for $8,000, he changed the primary beneficiary on a $50,000 life insurance policy from his wife to Lighter. In August, 1926, he borrowed $11,000 more from Lighter to avoid bank foreclosure on his home. Because the declining market reduced his commissions to nil, Hapke had only his $416.66 monthly draw as income. He had neither the assets to secure, nor the liquid resources to pay, the $115,000. Further, if Lighter withheld Hapke's monthly draw and charged him for only the loss itself without interest, it would still take over twenty years to pay the debt. Hapke had no choice except to shift the financial burden. He stopped shielding his his cousin and engaged an attorney to file suit against Hochgreve.¹⁹

The matter lay undecided as both sides jockeyed back and forth for position for nearly a year. In February, 1927, Lighter heard that Hochgreve
...is about to be married, or has just been married to some very rich girl, and it might be that we will get Hochgreve to confess the truth in this matter and he might involve someone else that we are very anxious to lay our hands on (you know who I mean). 20

Lighter was still deeply suspicions about Hapke's possible complicity in the Kempten and Laurenz debacles. He hoped to force Hochgreve into making a choice: implicate his former employer or have his past revealed to his new wife. Hochgreve held his ground for a time. However, the constant threats of exposure, which meant both financial ruin and loss of honor, finally proved too much. In May, 1929, Hochgreve committed suicide, taking his secrets with him. 21 Dan instructed Lifschutz to sue Hochgreve's estate, even though

...little if anything is to be obtained. ...but what little there is, if it can be obtained, we desire it. 22

Lifschutz's investigation revealed that Hochgreve's estate owed substantial back taxes for previously unreported speculative profits. German law required that this liability receive first consideration when the estate was distributed. When Lifschutz suggested settling with the estate for $8,000, Dan expressed disappointment with such a small sum. However, since the only alternative was a costly, time consuming legal action against the estate, Dan
accepted Lifschutz's advice. The final estate liquidation, in March, 1930, paid $7,200 from the insurance proceeds to restitute the embezzled $9,000.23

Neethe advised settling the remaining Kempten and Laurenz claims for whatever amounts could be gotten. Neither mill had any inclination to compromise. Dan finally dropped both suits entirely. Kempten consistently denied any liability for Duewell's and Hochgreve's unauthorized use of its name. No concrete evidence ever surfaced to establish whether the Laurenz contract was a genuine forgery or simply another fraud perpetrated by Hochgreve, Hapke, or possibly even Laurenz. Additionally, Germany's two year statute of limitations, set in motion when the contracts were closed on June 8, 1925, expired on June 8, 1927. Of the $115,000 lost by Hochgreve, the Kemptners only the $7,200 paid from his estate.24

Hochgreve's failure in life and his choice for death was a monument to greed and duplicity. Otto Schoen followed to the same end. Schoen, from Zwickau, was the first spinner openly to revolt. From 1923 through 1925, he complained frequently and vociferously about receiving off-color, inferior staple or Mexican cotton. Schoen's problem was particularly acute because his factory spun only a single, superior grade of thread from creamy, medium
staple, Texas cotton. However, inferior American cotton harvests made it impossible for Lighter-Nussbaum to perform their contractual promises specifically for every shipment. Instead, they vacillated between appeasement and intimidation. They occasionally sent Schoen exactly what he ordered. At other times, Lighter-Nussbaum sent what they hoped would approximate Schoen's needs—and then threatened litigation or blackmail when he refused to accept or pay for the shipments. Lighter promised to publicize

...the fact that [Schoen] received previous profits from us which were sent to Switzerland. We think this would probably get him to thinking, and might induce him to settle with us.  

Schoen felt trapped by a policy which constantly saddled him with unacceptable cotton or large financial losses. Because he operated a relatively small factory, Schoen could not tolerate either circumstance for an extended period.  

Schoen found himself even nearer the brink of bankruptcy when Lighter insisted that he pledge cash securities, known as margins, equal to the amount by which the market had declined. This forced Schoen to negotiate bank loans which, in turn, necessitated mortgaging capital assets. Bank examination of Schoen's books showed that invoice amounts on the conversion contracts were for longer terms and 30% to 40% higher quantities than ordinary
invoices. Hapke worried that the banks would identify the conversion contracts as speculative\textsuperscript{27} and interfere. \ldots I really fear that we shall have the greatest difficulties if these contracts are not transferred again and again until a liquidation without a\textsuperscript{28} substantial loss is possible.

Hapke believed the only solution was for Lighter-Nussbaum to hedge Schoen's contracts. This was accomplished by purchasing, purely for short-term speculation, quantities of cotton equal to Schoen's long term futures commitments. If the market advanced, the profits from selling the hedges were used to off-set the long term losses. However, if did not advance, then Lighter-Nussbaum lost on the hedges as well as on the futures.\textsuperscript{29}

Schoen, too, wanted the right to hedge. Fearful of losing everything, he watched the American cotton futures market carefully. When it made occasional small gains, he pleaded with Lighter-Nussbaum to hedge the contracts. The extreme uncertainty of 1920s market conditions compelled Lighter-Nussbaum, with Dan's consent, to resist this approach. Hapke cabled Lighter twice, insisting that hedges were required by Continental law. Lighter always denied any contractual liability to hedge.\textsuperscript{30}
In January, 1926, after his losses exceeded $312,000, Schoen repudiated the conversion contracts. His outstanding liabilities far exceeded his assets and income; his only options, litigation or bankruptcy. He chose litigation. The other spinners watched intently. Once Schoen repudiated his liability, Lighter-Nussbaum had no choice except to sue if it wanted to recover. Schoen became a test case. If he won, the other spinners could escape their difficulties. If Schoen lost, they probably would, too. The Kempners and Lighter-Nussbaum also knew how critical these cases were. Both sides maneuvered cautiously, each seeking to strengthen its own position while exposing and exploiting the weaknesses of the other. Hindering each side was the basic philosophy of the continental legal system. All officers of the court, including attorneys of record, were charged with discovering and revealing the truth. Both sides, having much to hide, were extremely circumspect as they briefed their lawyers.31

Over Neethe's objections, Max Bulling, the Kempners' German attorney, sued Otto Schoen in the Bremen Commercial Court during January, 1926. The only issue in the suit was whether Hapke's oral promise that Schoen could extend his futures for five years was binding. Trial was set for February 24, 1926.32 In the weeks before the trial date,
Lighter was less than sanguine about the possibility of a favorable decision. He worked for a negotiated settlement while continuing to refuse Schoen's quid pro quo of continued futures purchases. Schoen held fast, threatening to use gambling as his defense and contending that Lighter, as a non-resident plaintiff, must post bond for court costs. On February 13, Lighter sent 2600 marks ($600) for court costs and attorney fees. Before the court date, however, Bulling asked for a postponement.\(^{33}\)

Throughout March, Lighter continued to negotiate personally with Schoen, trying to resolve the case out of court. Schoen sensed that his threat to use the gambling defense had given him the stronger position and continued to put Lighter off.\(^{34}\) Lighter concurred with Schoen's assessment and wrote Neethe:

> With the presents lights, and on mature consideration, I must agree with you that [the case] was ill advised, and should be released, for no definite decision favoring us can be gained by it.\(^{35}\)

In the same letter, Lighter expressed concern about Bulling's competence:

> I wish to say...that Dr. Bulling will not only be a useless expense to us, since he has to employ associate counsel everywhere whenever and where the different suits are filed, but his varied opinions of late have shown us both that he is not altogether competent
to try cases involving such intricate questions, and such large sums. 36

By May, Bulling and Neethe advocated abandoning the suit against Schoen. However, when a plaintiff wished to withdraw his suit, he must either have the consent of the defendant or waive his right to relitigate the same issue. 37 Schoen insisted that the right to purchase futures, with a five year contract, was the price for his assent and, as Bulling noted,

. . . we will lose our most valuable weapon for further negotiations if we accept Schoen's demands. 38

Neethe's advice still was to discontinue the suit. Long before the case could reach final appellate decision, the five year period claimed by Schoen would have expired. Lighter instructed Bulling to withdraw the suit. Schoen still refused to compromise, but did not execute his threat to plead gambling. When the case went to trial, the judge ruled for Schoen since Hapke's oral modifications to the original contract had been ratified by Lighter's subsequent actions. Schoen had his five years. 39

After this setback, Neethe advised amending Schoen's contract to specify the five year duration. No further litigation should be pursued until the contract finally expired in 1929. Then, with the contract closed, the full
amount of damages could be determined, the hedge issue resolved, and the gambling plea obviated.\textsuperscript{40} Schoen, perhaps overconfident from his easy victory, had already anticipated this tactic and arrogantly claimed the right to "transfer as long as I wish and not only until 1929."\textsuperscript{41}

Dan furiously ordered Lighter to reopen the litigation against Schoen. However, Dan, too, had concerns about Bulling's loyalty and competence. He asked Heller and Chardine to determine if Bulling had any hidden connections to the spinners. Even though none existed, Dan asked his agents to recommend another cotton attorney, one who specialized in cotton matters, to handle the increasingly complex litigation. Heller, Chardine, and Zulow checked the references of several excellent attorneys. However, the best lawyers already represented Schoen and the other spinners. Zulow sent Dan the name of Alexander Lifschutz, a prominent civil attorney from Bremen. Although wily and well-versed in contract law, Lifschutz was not a cotton specialist. In response to a request from Neethe, he evaluated the suit against Schoen. Lifschutz's lengthy opinion delineated the strengths and weaknesses of Lighter's case.\textsuperscript{42}

Lifschutz stated that if, in the normal course of his business, a spinner conducted futures transactions to protect against market fluctuations and to assure a steady
cotton supply, German case law and statutes held that the transactions were legal. If a spinner purchased futures far in excess of his mill requirements, a court could reasonably presume that the contracts were speculative and therefore, illegal as gambling. Lifschutz believed that he could argue successfully, however, that Schoen's motive for purchasing far more cotton than he needed was to protect himself if the demand for finished thread suddenly rose. Only when that demand did not materialize, did Schoen sell the excess futures and retain the profits. Schoen's right to convert his futures into actual cotton at any time buttressed this interpretation. 43

Lifschutz's technically thorough and aggressively confident presentation impressed Ike and Dan. They retained him as principal counsel. Lifschutz was sure of victory. He declined a flat fee, preferring to be paid on a contingency basis. The contingency fee schedule, generally used when attorneys anticipate a favorable verdict, encouraged lawyers to appeal unfavorable decisions. If Lifschutz won the suit against Schoen, he received 7% of the total award. If he lost, he received nothing. Win or lose, all court, travel, and secretarial expenses accrued to the Kempners. While this contractual arrangement should have settled Lifschutz's fees, it did not. Lifschutz never
tempered his legal optimism: given enough time and sufficient appeals, he believed he could win the cases. However, financial profligacy plus Germany's economic deterioration left him constantly strapped for money. As the suits dragged on, Lifschutz frequently challenged his contract, always searching for loopholes through to obtain payments. Dan and Neethe, besieged by requests for advances, loans and miscellaneous fees in nearly every letter from Lifschutz, became exasperated and, more than once, considered discharging him. Lifschutz's determination to earn his contingency contract, as much as anything, accounted for continuance of the cases throughout the 1920s and 1930s.44

At Dan's request, Lighter wrote Schoen in November, 1927, reminding him that he refused to accept the five year contract offered the previous year. Lighter told Schoen that his unconditional transfer demands were unacceptable. Therefore, all contracts with Schoen were closed effective November 23, 1927. Lifschutz promptly entered suit against Schoen. As before, the suit was limited in scope, for fear of precipitating the gambling defense. This time, Lighter sued, not to recover standing losses, but for court adjudication of the amount Schoen owed. The suit's purpose was simply to harass Schoen into submission by making his
shaky finances public, thereby causing him difficulty in securing business credit. The Kempners hoped to counter the gambling defense by threatening an equally ruinous plea of their own. 45

Schoen, unwilling to be out-bluffed, invoked the gambling plea in defense. The case dragged throughout most of 1928 as each side perfected its evidence and obtained depositions from the various witnesses. Lifschutz, seeking to marshal public opinion, complained to the Bremen Chamber of Commerce about Schoen's "pleading gambling... This is considered indecent in Germany." 46 Dan approved Lifschutz's tactic and instructed Neethe to write the German and US Chambers of Commerce, all leading German banks, and the New York and Bremen Cotton Exchanges. 47

On December 10, 1928, the Second Chamber of the Commerce Court in Zwickau heard the case. Lifschutz argued that the contract was legal and that Schoen had breached its terms by refusing his assent to the five year amended term. Lifschutz pleaded for liquidated damages of $236,104.82 plus 7% interest from January 1, 1928. Schoen's defense consisted chiefly of his own admission that he had been gambling. In support, however, Schoen submitted testimony from Lighter's disgruntled ex-agent, Waldemar Hapke. Hapke testified that both he and Lighter had known of Schoen's
intent to gamble. In rebuttal, Lifschutz tried to discredit Hapke's motives and argued that Lighter had no explicit knowledge of the intent or fact of gambling. 48

Depositions from Ike and Dan denied the existence of any intent to gamble, cast aspersions on Hapke's veracity, cited the widespread use of conversion contracts throughout the cotton industry, and differentiated between conversion contracts for future purchase of actual cotton and speculative contracts in cotton futures. 49 Lifschutz also submitted depositions from several prominent American cotton brokers. The brokers, all friends of Ike's and Dan's, submitted the statements at either Ike's or Dan's request. Several asked Dan or Ike how the deposition should be worded before making any statements. In their final forms, as submitted to the court, all depositions stated uncategorically that the contracts were valid. 50

Alpheus C. Beane, president of Fenner and Beane, a New York cotton brokerage house with seats on both the New York and New Orleans Cotton Exchanges, testified that,

"...I will say that this contract is in effect a contract for the actual sale and actual future delivery by two American firms, and for an actual purchase of cotton. ...The purchase of New York futures mentioned in this contract is incidental to the sale of the actual cotton and is made for the protection of the buyer by fixing the
price for the purchase of his cotton.  

Sidney Wolff, president of A. L. Wolff and Company, another major New York brokerage house with seats on the New York and New Orleans Cotton Exchanges, had extensive experience with conversion contracts. His deposition virtually duplicated Beane's. Wolff liked to use conversion contracts because of their built in "safety valves."  

My experience of the workings of this clause is very favorable, as at the outbreak of the war (1914) our "conversion contracts" automatically became "futures," and we have just received a check from the American Government in liquidation of claims against Germany.  

Other prominent cotton merchants who executed supporting affidavits included: J. H. McFadden, president of McFadden Brother; Norman Mayer, president of Norman Mayer and Company; J. K. Dorrance, vice-president of Dorrance and Company as well as president of the Texas Cotton Association; and William L. Clayton, president of Anderson, Clayton and Company. All affidavits, when presented to the court, were nearly identical in form and substance. 

Dan sought assistance from the U. S. Department of Commerce, both directly and through the offices of Texas Senator Tom Connolly. Dan wrote to C. J. Junkin, head of the Division of Commercial Laws in the Department of
Commerce, seeking United States intervention in the case. Junkin requested an opinion from Arthur W. Palmer, Director, Division of Cotton Marketing, Department of Agriculture. Palmer's position was substantially weaker than that of Wolff and Beane:

There is nothing...in the language of this contracts which makes of it...a gambling contract per se...Since there would presumably be no question of the validity of the contract when the conversion of the futures is made to actual cotton...and since also the futures may be closed out within a specified time in lieu of conversion, the question would seem to narrow down to one of whether the futures contracts were in themselves enforceable. The weight of Federal decisions...seems clearly to be that they are. The state laws...appear not to be uniform, a few holding to the contrary.\(^55\)

The United States declined to intervene directly in the case because to do so was an unwarranted infringement on the sovereignty and integrity of another nation's judicial system.\(^56\)

Two German brokerage houses rejected requests for statements. Albrecht, Muller-Pearse and Company declined because they had open contracts with Hapke and feared he might turn against them "the same way he turned on Lighter-Nussbaum."\(^57\) Knoop and Fabarius refused because
their testimony might jeopardize a proposed compromise settlement with Schoen on another matter. 58

The trial court found Hapke's testimony credible and compelling. Its decision, handed down on June 14, 1929, ruled that the conversion contract between Lighter-Nussbaum and Schoen violated Section 764 of the German Civil Code and was, therefore, void and unenforceable. To that point, the court based its decision on a logical interpretation of disputed facts. The decision did not stop there, however. Perhaps reacting to the high collusivity evident in Lighter-Nussbaum's supporting affidavits, the court gratuitously ruled that all futures contracts were presumptively speculative and invalid unless consumated on German futures exchanges. 59

Lifschutz immediately appealed to the Eighth Civil Senate of the Oberlandesgericht (Court of Appeals) in Saxony at Dresden. The appeals court, after hearing arguments on December 10, 1929, announced its decision on January 14, 1930. It supported the trial court's decision in all respects. 60

Secretary of State Henry L. Stimson ordered Ambassador to Germany Frederic M. Sackett to:

   ... lay before the foreign office in Berlin. ... a protest of the decision
   ... declaring the transactions a gambling operation. ... that the sale
through the New York Exchange was legal and did not constitute gambling as such. 61

Senator Connolly interpreted the German court decision to mean that:

...the sale was gambling when transacted through the New York Cotton Exchange, but would not have been gambling had it been completed through the German Exchange or between two German citizens. ...this stand was taken on the ground that the German government had no supervision over the Exchanges outside its own country. 62

Lifschutz advised the necessity of appealing the case to the Reichsgericht, the German Supreme Court. He predicted that if the Schoen decision became final, it would vitiate all conversion contracts. 63. The Reichsgericht heard oral arguments and rendered its decision on October 4, 1930. It agreed completely with the decision handed down by the two lower courts. The Reichsgericht ruled specifically that:

[Schoen] entered into the contracts . . .with the sole intention that actual cotton should never be delivered or received, but that merely the difference between the contract price and the price on the exchange at the time of delivery should be paid; that he never did intend to use the contracts as the law allows . . .and finally plaintiffs, through the person of their German agent, Hapke, knew always of the intention of the defendant. 64
The Reichsgericht also sustained the position taken by the two lower courts that all futures business conducted on foreign exchanges were presumptively invalid since not directly subject to German control. 65

International reaction was immediate and vociferous. The Bremen Cotton Exchange protested. 66 Textil Zeitung, the journal of the German cotton industry, criticized the decision harshly in its November 15, 1930 edition:

The conversion contract is not a speculative transaction. It serves the same ends much better than most transactions covered by the commercial code, for it contains an insurance feature in case the cotton cannot be actually accepted. The conversion contract therefore, cannot be placed on the level of a speculative transaction, since it is—to a much greater extent than a mere futures transaction—connected with a genuine business transaction. The Courts' discrimination between the conversion contract and other business of a similar nature means relegating the cotton industry to the medieval warehouse stage. 67

The United States and International Chambers of Commerce lodged complaints with the German Chamber of Commerce. The New York, New Orleans, Houston, and Memphis Cotton Exchanges protested to the United States Departments of State and Commerce and to the Bremen Cotton Exchange. Several major American cotton brokers, among them Anderson Clayton of Houston, Fenner and Beane of New York and Wolff &
Company of New York followed suit. The American Bankers Association did, too. Ambassador Sackett presented a formal protest to the German government. He argued that the decision contravened international comity. He also cited *Birge v. Heye*, a United States Supreme Court decision in which American courts

...enforce[d] as against an American citizen and in favor of a German citizen the rules and regulations of the Bremen Cotton Exchange.

In the furor which attended the Reichgericht's decision, only John White, an attorney in the Washington, D. C. office of Fulbright, Crooker and Freeman, sensed something extraordinary about the case. He evaluated the decision, not as an insult to American honor, but rather, with regard to Lighter-Nussbaum's conduct. His firm, of which Senator J. William Fulbright was a member, declined to protest on Lighter-Nussbaum's behalf because

...only. Lighter and Nussbaum have had any disputes with futures transactions. [That] affords grounds for suspecting that these two firms have, contrary to the usual practice, engaged in private speculative transactions with the heads of other firms.

In any event, the Reichsgericht had made a final decision from which it had no way to retreat. The decision
cost the Kempners $262,117.88 in futures losses and
$22,747.81 in court costs.  

Schoen did not survive unscathed. All German cotton
exchanges cancelled his memberships. Unable to purchase
cotton, Schoen soon closed his mill. Several months later,
he reentered the textile trade, purchasing only actual
cotton and avoiding all futures. When Schoen's bills became
past due, his creditors remembered the past international
disgrace and exacted revenge. They refused to extend
Schoen's loans and foreclosed him into bankruptcy. Shamed
and dishonored, Schoen shot himself to death.  

Dan noted with bitter satisfaction that Otto Schoen,
like Hochgreve, had finally come to justice. However,
justice in the spinners' litigations carried a very high
price. With only three cases resolved, the Kempners had
lost $392,665.69; Hochgreve and Schoen, their lives.
ENDNOTES

1. George Hochgreve to George Duewell, March 16, 1924.

2. Ibid.

3. Ibid.

4. William A. Lighter to Albert Heidenreich, August 30, 1924.

5. George Hochgreve to William A. Lighter, May 26, 1925.

6. Ibid.

7. Ibid.

8. Ibid.


10. Ibid.

11. Ibid.

12. William A. Lighter to Max Bulling, December 17, 1925.

13. Ibid.


17. Ibid.

18. Ibid.

22. Ibid.
23. Alexander Lifschutz to John Neethe, August 6, 1929; Alexander Lifschutz to Daniel W. Kempner, August 8, 1929; A. Zulow to Isaac H. Kempner, December 19, 1929.
25. William A. Lighter to Max Bulling, September 2, 1925.
27. Waldemar Hapke to William A. Lighter, October 26, 1925.
28. Ibid.
30. Waldemar Hapke to William A. Lighter, February 8, 1925; William A. Lighter to Waldemar Hapke, February 9, 1925, February 11, 1925.
32. William A. Lighter to Max Bulling, January 5, 1926; William A. Lighter to Daniel W. Kempner, January 6, 1926; Alexander Lifschutz, Case Summary, 1945.
33. Max Bulling to William A. Lighter, February 13, 1926.
34. William A. Lighter to Daniel W. Kempner, March 14, 1926.

35. William A. Lighter, March 20, 1926.

36. Ibid.

37. Max Bulling to John Neethe, May 26, 1926.

38. Ibid.; William A. Lighter to Max Bulling, September 4, 1926.


40. John Neethe to Max Bulling, September 4, 1926.

41. Otto Schoen to Herman Nussbaum, July 19, 1926.

42. Alexander Lifschutz to John Neethe, January 18, 1927.

43. Ibid.

44. Ibid.

45. Daniel W. Kempner to William A. Lighter, October 21, 1927.


47. Daniel W. Kempner to John Neethe, December 3, 1928.


50. Sidney E. Wolff, Deposition, January 18, 1929; Alpheus C. Beane, Deposition, April 4, 1929; Request for instructions: John Neetee re S. T. Hubbard, president of Hubbard Bros., New York, to Daniel W. Kempner, January 22, 1929.

51. Alpheus C. Beane, deposition, April 8, 1929.

52. Sidney E. Wolff, deposition, January 18, 1929; Sidney E. Wolff to Daniel W. Kempner, January 12, 1929.

53. Sidney E. Wolff to Daniel W. Kempner, January 12, 1929.

54. J. W. McFadden to Daniel W. Kempner, January 14, 1929.


56. Daniel W. Kempner to John Neetee, December 18, 1929. The United States Government's weak responses to these events in the 1920s and 1930s are quite consistent with prevailing national isolationist tendencies. These propensities, which simultaneously hindered the international disarmament movement, reflected the attitudes of a nation which enjoyed the privileges of power but wanted none of its responsibilities. See Gordon A. Craig and Alexander L. George, Force and Statecraft: Diplomatic Problems of Our Time (New York: Oxford University Press, 1983), chapter 5 passim for a fuller exposition of the effect of public opinion on foreign policy. Craig and George noted (page 61) that: Woodrow Wilson was...a man hailed as a world savior in 1918 and then forced to see his design for a democratic world system rejected by an American electorate whose ardor for a role in the world community cooled when its prospective costs were realized and which then retreated precipitately toward the supposed blessing of what Warren G. Harding called "normalcy."

57. A. Zulow to Daniel W. Kempner, January 31, 1929.

58. Ibid.

60. Ibid.


62. Ibid.

63. Alexander Lifschutz to Daniel W. Kempner, March 25, 1930.

64. In the Matter of W. A. Lighter and Co, Inc. of New Orleans, La., U.S.A. and Herman Nussbaum of Galveston, Texas, U.S.A., Supreme Court of Germany, First Civil Court, October 4, 1930.

65. Ibid.


67. Textil Zeitung, November 15, 1930.


71. H. Kempner, interoffice memo, December 29, 1936.

72. John White to John Neethe, May 12, 1931; Daniel W. Kempner to Jean De Grandmaison, December 4, 1931.
CHAPTER IV

Lighter-Nussbaum, of all the brokers who used conversion contracts, were the only ones to encounter serious disputes with their clientele. The uniqueness—and the hazards—of this predicament escaped neither Lighter-Nussbaum nor the spinners. Emboldened between 1925 and 1930 by Otto Schoen's easy legal victories, they were confident that they could expose and exploit Lighter-Nussbaum's weaknesses. While Schoen acted alone, the others, including Hapke, worked together. Perhaps more realistic than Schoen about the ultimate risks, they tried initially to avoid the perils of litigation, striving instead for advantageous negotiated settlements.

In a protracted series of time consuming maneuvers, the spinners demanded contract extensions and hedge protections, complained about shipment quality, and required proofs that the contracts had actually been executed. They quickly noticed Lighter-Nussbaum's willingness to compromise on every issue except one. Each time the spinners requested proof that the contracts had been executed, Lighter-Nussbaum, acting directly on Ike or Dan Kempner's
instructions, adamantly refused to comply. Suspecting, but unable to prove, both Lighter-Nussbaum's and H. Kempner's vulnerability, the spinners insistently pressed this point. The strain kept Ike and Dan frustrated and worried. Although the spinners never knew it, they had targeted the single issue which, if made public, could not only ruin Lighter-Nussbaum's business but also destroy H. Kempner's reputation as an honorable cotton merchant.

The spinners' tactics kept Lighter-Nussbaum and the Kempners constantly on the defensive, exacerbated tensions among the Kempners and their business partners, and finally caused a complete breakdown in personal relationships. Ike and Dan, pushed from all sides, felt as if they were engaged in a multi-front war. The spinners gave no quarter.

By early 1925, the spinners, collectively, were nearly broke. The conversion contracts, in a steadily declining market, failed to achieve their original purpose: the creation of a method to finance the purchase of actual cotton. Without cotton, the spinners were out of business. They asked Lighter-Nussbaum to sell them actual cotton on credit. Lighter-Nussbaum refused.¹ The spinners then mortgaged their capital assets to acquire the necessary cash for actual cotton purchases and margin calls. Hapke noted how dangerous this course could be:
. . . the spinners are depending [on] the banks, and if the banks are observing that the invoices amounts are 30-40% higher than the ordinary invoices at present, they will no doubt interfere and do all kinds of questions. The spinner generally is not allowed to speculate, and a contract for 12 months would have been nearly the same as an ordinary futures contract. . . the whole success in our business during the last years was based upon the fact of a combined transaction between futures and actuals. . . I really fear that we shall have the greatest difficulties if these contracts are not transferred again and again till a liquidation without a substantial loss is possible.

With much to lose, both sides had substantial incentive to compromise. In February, 1925, Lighter sailed to Europe for a series of personal interviews with each spinner. Throughout March, he negotiated new agreements which extended existing futures contracts to 1928, five years from the original agreement dates. There were to be no new futures contracts. The settlement was silent with respect to the hedging and margin issues, leaving the old agreements on these points still effective. All the spinners signed amended contracts.  

The time extensions, intended to help the spinners escape their financial difficulties, instead entrapped them further. As the market steadily fell, losses rose and each side tried to shift the burden of risk to the other.
Lighter-Nussbaum demanded margins; the spinners, hedges. Neither had the assets or inclination to compromise. The spinners blamed Lighter-Nussbaum's refusal to hedge for the nearly $2,500,000 in accumulated losses. Lighter blamed Hapke for failing to collect the margins and for putting "the idea into every one of these spinners that we were compelled to hedge their cotton."  

In February and March 1926, Lighter extended the contract expiration dates even further, giving the spinners until 1931 to liquidate the futures. As before, and for the same reasons, this neither helped nor satisfied the spinners.  

The spinners faced not only financial reverses but also production problems. From 1925 through 1928, Lighter shipped inferior cotton, mostly grown in Mexico, Mississippi and Louisiana, to the spinners. Many refused to accept it. Instead, they wanted the superior cotton from Oklahoma, Texas, and Arkansas which Nussbaum shipped from Galveston. In July 1925, Hapke pleaded with Lighter,  

...to let Mr. Nussbaum ship the cotton in question as otherwise we shall have more difficulties...Nearly everybody is complaining about your qualities which are not at all in comparison with the good prices they have paid.
Lighter denied having sent poor cotton, charging instead that there must have been some "crooked work...at [port warehouses in Bremen] in changing cotton." Hapke immediately challenged Lighter's assertion:

Kuchen has declared not to buy a single bale of cotton from your firms in the future if you have not taken back the unfortunately shipped 50 bales...I have informed you about the judgment from absolutely neutral people who were asked to buy those 50 bales, but no offer was obtained as every one explained the cotton contains the character of scraps and one man told me that such cotton would never be shipped by an American firm willing to ship correct cotton.

Hapke reported that both Leuze and Jacquel had similar complaints and that, if Lighter continued his present course, all the spinners were sure to become dissatisfied.

Furthermore, neither he nor anybody...

. . . in Germany and also in the U. S. and in the whole cotton world will believe the...changing of cotton was done at Bremen.

Hapke suggested that Lighter hold his Bremen or New Orleans comptrollers responsible since any switching required their complicity. He concluded,

I do not at all intend to make any insinuations against cotton you are buying in New Orleans on contracts...but I am forced to tell you exactly what I have seen and what the spinners are proving to me.
Lighter's rather heated and predictable response was,

Your insinuations . . . are unsound. You possibly seem to overlook the fact that both Mr. Nussbaum and I have had quite a few years of experience in this business, that we both think we know what we are doing, and since we are taking the responsibility financially, we must control our business as we see it.11

Lighter repeatedly warned Hapke to "stop taking the spinners' sides and handle business according to business principles."12 Charges and countercharges resounded with endless variations from 1925 through 1928.13

The spinners resorted to intimidation. Typical was Kolbermoor's threat to plead the gambling defense unless Lighter-Nussbaum accepted its offer of $26,000 in full settlement of the outstanding indebtedness of over $200,000.14 Neethe denied the contracts were illegal and asserted that Kolbermoor must choose its own course:

In the last analysis, it makes little difference whether you . . . urge the illegality of these transactions. . . . A suit in any event . . . cannot help but show that . . . your firm speculated with a loss now exceeding $200,000 without any intention to pay it. Whether this will be agreeable to you or not, you must determine.15

Kolbermoor's attorney, Dr. E. L. Heinemann, slightly tempered the mill's threat to plead gambling. He
acknowledged that future contracts to assure steady supplies of actual cotton were "absolutely necessary for the commerce in cotton" and had been held legal by the Reichsgericht. However, the disputed conversion contracts between Lighter-Nussbaum and Kolbermoor were "pure future transactions" even though made in a form which gave "the appearance that no future business was intended." Whether the contracts complied with New York Cotton Exchange Rules was immaterial since German law, which looked to the intent of the parties rather than the form of their agreement, controlled. Thus, the court would examine the question of intent whether or not either party pleaded it.¹⁶ Heinemann concluded:

After all is said, the transactions . . . represent nothing but a poor gambling transaction which ought to be considered illegal by the court of its own motion. . . . whether Kolbermoor in any suit will plead this or not.¹⁷

In the air of escalating mutual mistrust that permeated all transactions, first Jacquel and then the remaining spinners demanded more than Lighter-Nussbaum's word that the losses existed. They suspected that Lighter-Nussbaum had created ledger sheets, made fictitious entries, and charged them for imaginary, non-existent losses. The spinners wanted proof that the contracts had been executed, the fees were legitimate, and the losses real. They insisted on, and
were entitled to, legally sufficient proof of loss. They demanded to examine H. Kempner's books or to see the transaction slips. 18

Dan already knew, however, that compliance was impossible. As he candidly—though privately—admitted to Ike, the spinners were correct. H. Kempner had done exactly what the spinners suspected and, thereby, had found a way to profit from the declining futures market. It had neither lost the entire $2.5 million it claimed nor executed all the futures:

...we have actually lost some two million dollars...we executed on the New York Cotton Exchange over 80% of the transactions...unfortunately a chain is no stronger than its weakest link, and that having broken the chain (which we have done with every spinner) arbitration would be decided in favor of the spinners. 19

Dan faced a true dilemma. If H. Kempner and Lighter-Nussbaum did not comply, the spinners threatened to repudiate their contracts. If the firms produced only partial evidence of contract execution, then H. Kempner's secret improprieties became public knowledge, thereby destroying H. Kempner's reputation for honesty. Without a good name, H. Kempner could not survive in the cotton trade. Dan's first priority was to devise a strategy to protect the family name.
H. Kempner gave two reasons for rejecting the spinners' request to examine the company's books. Since the books contained all H. Kempner's transactions, any examination by the spinners compromised the confidentiality of other customers. Additionally, because only one irreplaceable set of books existed, H. Kempner refused to risk their loss by sending them to Europe for audit. 20

Dan, however, did agree to produce the transaction slips. He first asked Executive Secretary Thomas Hale for the New York Cotton Exchange's original certificates. Hale replied that, in the absence of a formal complaint against a member, the exchange could not produce original trading slips. 21

Dan's alternative was to have his clerks comb the files, a tedious manual process, searching for the hundreds of small 3" by 5" slips which brokers used to confirm futures trades. The slips showed the quantity, the grade, and the price of cotton which a broker bought or sold on a specific date. They did not indicate for which spinner or spinners the transaction had been made. If Lighter-Nussbaum proved that it purchased or sold enough cotton each day to cover all orders for that date, they could, by repeating the authenticating process over and over, conclusively establish which losses charged to the spinners
were real. H. Kempner's clerks found most, though not all, of the existing slips.\textsuperscript{22}

Dan asked other brokers with whom he transacted business to search their files at his expense. Newman Brothers, with over twenty tons of materials to search, promised to handle Dan's request as quickly as possible. Hubbard Brothers and J.S. Bache agreed to make duplicate trading slips, a process that might take some time. Brown-Friedlander, with its records in storage, estimated that finding and duplicating the records might take over a month.\textsuperscript{23}

Once all the valid slips were assembled, Dan still had to explain approximately $500,000 in unsubstantiated charges. He contemplated several alternatives. First, he planned to assert that the contracts had been executed on the New Orleans Cotton Exchange and the records were being obtained. Because proof still had to be produced, this idea only delayed the inevitable and did not improve H. Kempner's position.\textsuperscript{24}

Dan then asked several broker friends, among them Alpheus Beane, to find any slips in their own files which might suit his purposes. He never admitted any wrongdoing, but simply stated that some slips were missing from his files. On its face, the statement, even though calculated
to mislead, was quite correct: the slips were missing. If Dan's friends failed to ask why the slips could not be found, so much the better. Dan relied on the fact that every broker had, quite literally, a warehouse full of slips. They all knew that finding one, or even several, slips was a nearly impossible task. None asked any embarrassing questions. In a letter to Lighter, Dan realistically assessed the chances for success:

But you can readily understand that with the greatest help from [other] brokers, we are still going to be unable to show each and every transaction, and I have always felt that those... could be explained by the statement that we made a small mistake. [This explanation is not] entirely satisfactory to me but [it] is very much better than nothing at all.

For H. Kempner, a company which prided itself on bookkeeping precision, the disclosure of massive errors was nearly unthinkable—and not very believable. Lighter, however, thought he had a better solution. Lighter invited Dan to New Orleans and asked him to:

Please bring along with you a supply of H. Kempner's letterheads, copies and other such sheets as you use for your files of letters you write, also some envelopes. I have some ideas which you may approve, and if so, we will need these letterheads; therefore, please do not fail to bring them along with you.
Dan did as Lighter requested. Together, the two men created the carbon copies of purchase orders for cotton futures. The letters, while probably never mailed, served to validate additional futures purchases. However, had they ever been submitted as evidence to a court, there was a good chance that Dan and Lighter would have been caught. On their faces, they contained one small, though important, indication of non-authenticity. H. Kempner, without variance, used a two digit reference identification code on all its correspondence. The first digit designated the author; the second, the typist. The five forged orders were the only pieces of correspondence in the entire file which failed to conform. Two had "DVK-s" for reference identification; on two others, "DVK-s" had been erased and replaced with Dan's usual "22" code; on the last one, the faulty identification code had simply been erased. 28

As Dan and Lighter worked toward their goal of documenting, in one way or another, all the futures transactions, Dan also settled on his strategy. Aware of the dangers which attended presenting falsified records, he decided they would be his last resort. For the present, he flatly rejected all demands to produce the slips, arguing that the spinners had accepted his word, and the profits, during good times. Therefore, the spinners should accept
his word, and the losses, during hard ones. This obdurate stance, so different from Dan's customary willingness to negotiate disputed issues, only served to deepen the spinners' suspicions and intensify their determination to see proof of contractual execution.29

In March, 1927, Dan sent Lighter to Europe for another round of negotiations with the spinners. Sidney E. Wolfe, a New York cotton merchant, advised against the plan:

It seems to me that you are making a mistake in having Lighter go abroad at the moment. He is quite capable when sober, but he is his own worst enemy at other times. As a result your affairs have gained some notoriety through no fault of yours. Furthermore you are unwittingly making enemies when you really need friends.

Dan curtly replied that H. Kempner's connection with Lighter was only indirect. He also asserted that both Nussbaum and Neethe had accompanied Lighter on previous trips to Europe and neither had noticed any alcohol abuse. However, for safety,

On the present trip, [Lighter] will have his attorney, Mr. Gilbert, to chaperone his commercial conduct, and his wife to chaperone his personal conduct.

Jacob Gilbert, Lighter's attorney, was a highly respected New York contracts attorney with extensive cotton litigation experience. He was also famous for substantial
negotiating skills. After reviewing the evidence, Gilbert found he had the same suspicions as the spinners: he, too, did not believe the losses were real.\textsuperscript{32}

In early May, Gilbert notified the attorneys for the spinners that he would like to meet with them and their clients to discuss an amiable settlement. Georges Schmoll, who represented Jacquel, Bourcart, Marchal and Kiener, and E. L. Heinemann, who represented the remaining spinners, set the time for 9:00 a.m. on June 27 in Frankfurt.\textsuperscript{33}

When the meeting began, only Stadtbach was not present. Gilbert, concluding that the best defense was a strong offense, immediately tried to seize the upper hand. It soon became apparent to the spinners that Gilbert had come, not to negotiate, but to lecture, harangue and threaten. Gilbert's abrasive opening set the meeting's unhappy tone:

\begin{quote}
What I shall try to do at this meeting is to see whether we can come to some understanding, some agreement, and if we cannot I want you to realize what you are in for. . . .[Lighter-Nussbaum] are now ready to take the offensive. . . .My clients are not only prepared, but ready to strike back.\textsuperscript{34}
\end{quote}

Gilbert's intended agenda was to produce the contract slips, to discuss the possibility of an amicable settlement or, failing that, to propose arbitration by one of the major exchanges. He never followed the plan. Instead, one by
one, he raised all legal points on which the spinners would probably rely should the disputes go to court. By doing so, Gilbert tried to establish the ease with which the spinners' defenses could be countered by Lighter-Nussbaum. The tactic, designed to overwhelm and impress the spinners, only antagonized them. 35

After admitting that he had not brought the slips, Gilbert charged the spinners with obfuscation and delay. He demanded to know why the spinners needed the slips. Heinemann replied that his clients wanted evidence that the contracts had been executed. Gilbert angrily retorted that production of the slips was immaterial because the spinners never intended to pay the losses. 36

Gilbert next asserted that, after the slips were produced, the spinners planned the raise the issue of Lighter-Nussbaum's legal responsibilities to hedge. After that issue was resolved, the spinners would either explicitly plead the gambling defense or rely on court recognizance of the question. Gilbert warned that this course could jeopardize the mills since no reputable firms would transact futures business with them. 37

Heinemann and Schmoll conceded that a court, if the disputes came to litigation, would probably determine
whether gambling was involved. However, they strongly denied that their clients intended to plead gambling. 38

Gilbert accused the spinners of conspiring to defeat their legal obligations. He ended his harangue with a proposal that Lighter-Nussbaum and the spinners settle their disagreements by asking "practical men of the industry" to devise a plan. When pressed by Heinemann, Gilbert suggested the possibility of spot cotton sales for cash, with delivery dates and payment schedules extended over several years. Heinemann and Schmoll rejected Gilbert's offer and indicated the uselessness of further negotiations. Gilbert then demanded to know whether the spinners would accept arbitration by a New York Cotton Exchange committee. Heinemann and Schmoll refused to commit their clients until the topics to be arbitrated were specified. 39

Throughout the meeting, it was clear that Hapke's loyalty and friendship now belonged to the spinners, not to his former employers. He sided with the spinners as they challenged and rejected Gilbert's assertions. He smirked at Gilbert's discomfiture when Heinemann and Schmoll won point after point in the legal arguments. 40

Gilbert, who thought he had won the debate, never realized how poorly he had served H. Kempner. His memo, which accompanied the meeting transcript, showed great
self-satisfaction. Gilbert believed that he, the German spinners and their attorneys had parted "on the most friendly terms."41

When Dan read the transcript, he thought otherwise. He wrote candidly to Lighter in Paris:

. . . on the whole it seems that. . . [Gilbert] has antagonized the spinners, and I doubt whether anything was accomplished other than to increase the strained feelings already existing on the part of the spinners toward you, though it may be in talking straight from the shoulder, as he has done, he may have put some fear into their minds. Gilbert has intense powers of persuasion, and has undoubtedly used these powers with some success on you, but after all they have apparently been barren of results on either Heinemann or Schmoll or the spinners.42

Dan believed that Gilbert wanted "to string out these negotiations" to increase his fees.43 He told Lighter that, although Gilbert remained an attorney of record, his services were not to be used. Dan instructed Neethe to forward settlement proposals to the spinners. If accepted by the spinners, Lifschutz should formalize them as contracts,

. . . so as to eliminate, if possible, the gambling question forever. This is a very serious point and it is doubtful whether we can eliminate this feature, because under German laws any business in which a taint of gambling is in evidence is void, and any contract
thereafter made resulting out of a gambling contract is likewise void. If the spinners rejected the offers, Neethe planned to file a test suit.

Dan set his terms. (1) Lighter-Nussbaum would not furnish the contract slips unless the disputes resulted in litigation. (2) Lighter-Nussbaum would accept settlement at the rate of 75 cents to 80 cents on the dollar. One-third was immediately payable, in cash. The balance was due in one, two, or even three years at 6% interest. Dan suggested that Lighter-Nussbaum attribute the heavy concessions to high litigation costs. (3) The spinners must pledge security for all settlements. The security must be acceptable to H. Kempner and lodged in America where it could be seized if the spinners defaulted on their settlement. It would also be safe if the spinners later used the gambling defense in German courts. (4) The spinners must begin to convert their futures immediately into actual cotton. They had no right to purchase any additional futures until the existing contracts had been completely liquidated. The spinners protested "with the greatest energy" against Dan's proposals and refused to accept them.
The prospects for happy resolution looked increasingly hopeless to Dan. On August 1 and 2, 1927, he met Nussbaum, Neethe, and Gilbert in Galveston for a strategy session. Afterwards, he wrote to Ike, on vacation in Canada:

I have convinced Gilbert, much to his surprise (and I really believe that I did convince him and left him more sympathetic with us than before), that we have actually lost some two million dollars.

Dan revised his previous opinion of Gilbert's tactics and unhappily concluded,

The more I think of this awful situation, the more I believe that if threats such as Gilbert has cunningly inaugurated do not bring the results, we ought to chuck the whole thing in the waste paper basket, close the futures, as far as the spinners are concerned, and ride them out by riding the market one way or another until we have reduced the loss to a basis we can stand with equanimity.

Ike agreed that collecting from the spinners looked doubtful. However, he advocated pressuring them for settlement until cotton prices rose sufficiently to permit recovery through the market. He also discouraged closing the contracts arbitrarily, a move certain to antagonize the spinners. This interchange between the brothers was only the first of many discussions which concerned the feasibility of continuing to press their cause. Each time
the issue arose over the next twenty-five years, Dan always advocated abandoning the issue. Each time, he bowed to Ike's superior position within the firm.\footnote{49}

Ike also recommended that,

\ldots Lighter and Nussbaum close out these contracts at a definite time if they are unable to carry them any longer; but whenever I do that I would dissolve the present corporations at once, or rather liquidate them, then organize new ones. Whether we do that or not, it will not relieve us from the danger that these people in Europe will not only question the transaction but will try to implicate Kempner in it.\footnote{50}

Ike urged his brother not to tell Lighter what they planned.\footnote{51}

Dan concurred. Together, the brothers began subtly to deny Lighter any decision-making authority. Both feared that Lighter's policies would only produce "another four years of uncertainty and worry." They also instructed Neethe to continue negotiations with the spinners for orders to transfer the futures forward or to close out the contracts entirely. Several spinners complained vociferously when Lighter, acting on Dan's instructions, refused to send them the occasional profits which resulted from small, erratic market gains. Lighter also refused to convert futures into actuals.\footnote{52}
Dan hoped to strengthen his position against the spinners by changing the forum for arguments from law to politics. In early January 1928, he wrote Texas Senator Morris Sheppard, soliciting his assistance. After giving the senator H. Kempner's version of the dispute, Dan noted that the U. S. Senate had before it a bill to dispose of German properties seized during World War I. Dan asked Sheppard:

...to arise on the floor of the Senate with a statement to the effect that while you do not intend to oppose this Bill, you desire to go on record yourself as opposing any further assistance to Germany as a nation or to individuals in that country until such claims [as exist between Lighter-Nussbaum and the spinners] are harmoniously settled.

Sheppard declined, suggesting instead, that,

...a better procedure would be for me to address a communication to the German Embassy asking its good office in the matter...and stating that continued actions of the kind your adversaries are practicing may seriously impair the German credit situation.

Dan began seriously to consider the possibility of hiring an outstanding Washington attorney,

...for the sole purpose of putting, keeping and impressing this matter before our State Department and our Bureau of Foreign and Domestic Commerce.
Dan also launched a public relations campaign to generate support. He asked his brother-in-law, Joseph Bertig, a large cotton producer in Paragould, Arkansas to write about the spinners to Arkansas Senator T. H. Caraway, a member of the Committee on Agriculture and Forestry. Dan directly approached U. S. Ambassador to France Myron T. Herrick about the necessity for a peaceful settlement because,

I strongly realize the dangers of litigation in a foreign country where the sentiment is, to say the least, not pro-American.

Additional requests for aid went to every Texas member in the U. S. House of Representatives, Senators Earle B. Mayfield of Texas, Joseph R. Ransdell and J. R. Broussard, both of Louisiana, and U. S. Commercial Attache to Germany Douglas R. Miller. Mayfield, particularly, was optimistic that sufficient pressure could be exerted on the spinners through political channels to force a settlement.

Meanwhile, Ike and Dan decided that the time had finally come to move against Lighter. Lighter was nearly bankrupt. His frequent negotiating trips to Europe produced little except additional expenses. On March 5, 1928, Dan prepared an agenda to fire Lighter. H. Kempner planned to cancel Lighter's use of the New Orleans Cotton Exchange
seat. All powers of attorney, including those issued to Nussbaum, reverted to H. Kempner. At the foreclosure, Lighter and Nussbaum assigned all their interests in, and demands against, the spinners to H. Kempner. Included specifically were the rights to sue, engage counsel, collect judgments, and compromise claims. Dan also intended to:

Examine the minute book carefully, and by-laws for stockholders' meeting and/or directors' meeting, whereby Lighter's resignation as President and Director can be accepted, and Buhmann appointed instead, with Mehan Vice President, and Hurst Secretary-Treasurer. Lighter, Jr., to retire as Director, and Hurst to be appointed a Director. Minutes to be written up carefully. A careful audit of the books. . .[Execute] stock transfers.

Lighter demanded $13,000 as the price for his assent, silence, and continued loyalty. Dan agreed. Lighter also wanted assurances that, if called to Germany to testify in the cases, H. Kempner would cover both his expenses and any liability which might accrue from adverse judgments. In a carefully worded response, Neethe advised Lighter that,

. . .should an arrest be issued for you, we assure you that we will do all in our power to aid and help you in the matter. . . .we cannot obligate ourselves to do more than this or to attempt to assume any liability for claims or judgments that may be entered or filed against you personally.
Ike and Dan's foreclosure did not surprise Lighter. Relations among the men had steadily deteriorated since 1925. They now wrote coldly formal letters which attended strictly to business, omitted social amenities and greeted each other as "Lighter" or "Kempner." At the end, all correspondence rudely opened with the curt, impersonal salutation, "Sir."^63

The foreclosure had a number of immediate results. (1) The Kempners no longer had to contend with Lighter's inconsistent handling of the spinners. (2) The $13,000 payment insured Lighter's continued loyalty, at least for the moment. (3) H. Kempner endured no further financial jeopardy from Lighter's propensity to make unauthorized written and oral contractual changes. (4) H. Kempner now had sole responsibility for losses or incompetent decisions. (5) For the first time since H. Kempner had entered its arrangements with Lighter-Nussbaum in 1919, H. Kempner was free to direct its course openly.

Neethe notified Heinemann of Lighter's resignation and of the business's continuance under new management.^64 Dan wrote several New York banks, seeking financial and personal data about the spinners.^65 All replied with large amounts of information within a short time. The spinners all were solvent and, therefore, suable.^66 After receiving this
information, Neethe notified the spinners on March 29, 1928, that all conversion contracts had been closed and were to be liquidated as soon as possible with the losses charged to the spinners' accounts. Neethe demanded payment of all outstanding debts. If the spinners did not settle their accounts shortly and in full, H. Kempner intended to file suits against each one. When none paid, H. Kempner filed suits against Kolbermoor and Stadtbach. 67

Neither H. Kempner nor the spinners had any path of retreat. With the contracts closed, the total damages became fixed and the market could no longer save or destroy. Each side had no recourse except from the other. The spinners, armed with the gambling defense and their suspicions about the transaction slips, knew they had the stronger position.

Both sides watched and waited intently as successive appeals courts announced their decisions in Otto Schoen's case. In 1930, the spinners greeted the Reichsgericht's final judgment with joy and relief. They believed that, in Schoen's victory, they had found their own. Their elation, however, was short-lived. With the furore that erupted after the decision, the price paid by Otto Schoen for pleading the truth became too high for the remaining spinners. And, H. Kempner's cause celebre, which only shortly before seemed
destined for defeat, assumed a curious political and legal legitimacy.
ENDNOTES


2. William A. Lighter to Waldemar Hapke, January 24, 1925, two cables on January 29, 1925, February 5, 1925, February 8, 1925, February 9, 1925; Waldemar Hapke to William A. Lighter, January 28, 1925, two cables on February 1, 1925, two cables on February 5, 1925, two cables on February 8, 1925, February 10, 1925, February 13, 1925, February 14, 1925, October 26, 1925; Waldemar Hapke to Herman Nussbaum, February 16, 1925; Lighter-Nussbaum to Marchal, March 9, 1925, with identical correspondence to all other spinners. This is only a sampling of letters surrounding the controversy.

3. Lighter-Nussbaum to Kolbermoor, March 20, 1925; identical correspondence to all other spinners.

4. William A. Lighter to Kulmbach, November 11, 1925; William A. Lighter to Max Bulling, December 17, 1925.

5. Lighter-Nussbaum to Bourcart, February 16, 1925; similar correspondence to all other spinners.


7. William A. Lighter to Waldemar Hapke, August 3, 1925.

8. Waldemar Hapke to William A. Lighter, August 23, 1925.

9. Ibid.

10. Ibid.


13. Waldemar Hapke to Herman Nussbaum, June 19, 1926, June 21, 1926; Waldemar Hapke to William A. Lighter, two letters on October 26, 1925; Marchal to Edward G. Doll, July 15, 1926.


15. John Neethe to G. Jordan, October 14, 1926.

16. E.L. Heinemann to John Neethe, December 1, 1926.

17. Ibid.


21. Daniel W. Kempner to Thomas Hale, January 5, 1927; Thomas Hale to Daniel W. Kempner, January 8, 1927.


27. William A. Lighter to Daniel W. Kempner, January 25, 1927.

28. The five documents can be found in the Kempner Collection, Series 3, Box 34, File 2. There is no
evidence to support any inference that the addressees, either knew of, or had any complicity in, the forgeries. For that reason, I decline to cause embarrassment by naming them.


30. Sidney E. Wolff to Daniel W. Kempner, March 10, 1927; Sidney E. Wolff to Isaac H. Kempner, March 10, 1927; William A. Lighter to Daniel W. Kempner, March 11, 1927.


32. Sidney E. Wolff to Daniel W. Kempner, April 20, 1927; Daniel W. Kempner to Isaac H. Kempner, August 3, 1927.

33. George Schmoll to Jacob H. Gilbert, May 10, 1927.

34. Transcript, meeting between Jacob H. Gilbert, the spinners and their attorneys, June 27, 1927.

35. Ibid.

36. Ibid.

37. Ibid.

38. Transcript, meeting between Jacob H. Gilbert, the spinners and their attorneys, June 27, 1927.

39. Ibid.

40. Ibid. There is no documentation in the Kempner papers to indicate just how much Hapke actually knew about H. Kempner's and Lighter-Nussbaum's business practices. However, his open loyalty to the spinners during the meeting seems to indicate that, what ever he knew, he shared with them. That also may help account for the spinners' continued insistence that the transaction slips be produced.

41. Ibid.

42. Daniel W. Kempner to William A. Lighter, July 27, 1927. Ike approved of Dan's position. His handwritten notation at the top said:
My dear Dan,
I consider this one of the best letters you have ever written. It puts all the issue so clearly that if Lighter is not impressed it is simply because he doesn't want to be! It is forceful and sound—and goes to the very guts of the situation.

43. Ibid.
44. Ibid.
45. Ibid.
46. George Schmoll to John Neethe, September 20, 1927; George Schmoll to Jacob H. Gilbert, November 28, 1927.
47. Daniel W. Kempner to Isaac H. Kempner, August 3, 1927.
49. Isaac H. Kempner to Daniel W. Kempner, August 31, 1927.
50. Ibid.
51. Ibid.
52. Daniel W. Kempner to Isaac H. Kempner, September 14, 1927.
57. Daniel W. Kempner to Myron T. Herrick, January 25, 1928; John Neethe to Joseph E. Ransdell, February 7, 1928. Between 1924 and 1931, American money played a significant role in European politics. In 1924, after Germany defaulted on its reparations payments and France invaded the Ruhr Valley in retaliation, Charles G. Dawes negotiated an international loan to stabilize
German currency and arranged a flexible, graduated scale of reparations payments. Five years later, Owen D. Young headed a commission which further reduced the payments. Between 1924 and 1931, German governments—both federal and local—took the amended reparations scales, borrowed over $2.6 billion from various United States sources. The Allied nations used the reparations received from Germany to keep up their payments on their American war debts. The interdependence of debts and reparations, thoroughly obvious, went unacknowledged in the United States. Most Americans, including President Calvin Coolidge, rejected any notion that Allied battle losses served to offset the debts. In business-oriented America of the 1920s, the debts were pure and simple business obligations. By the late 1920s, much of Europe thought of the United States, not as Uncle Sam, but as Uncle Shylock. See: Gordon A. Craig, Germany, 1866-1945 (New York: Oxford University Press, 1978) pp. 514-533 for a full exposition of this point. Particularly interesting is Craig's documentation (pages 514-515) of German response to any continued reparations payments in 1924. Most Germans united behind the notion that they were being enslaved by the rest of the world. There were also hints of current and future attitudes toward Jews: General Erich Ludendorff, during Reichstag debates in 1924, shouted, "This is a disgrace to Germany! Ten years ago I won the battle of Tannenberg. Today you have made a Jewish Tannenberg!"


59. Isaac H. Kempner to William A. Lighter, January 17, 1927, dictated how corporate offices should be distributed. Daniel W. Kempner's agenda of March 5, 1928 was within the usual pattern of control. Receipt, William A. Lighter to Daniel W. Kempner, March 29,
1928; resignations of William A. Lighter and William A. Lighter, Jr., March 29, 1928; R. I. Mehan to Daniel W. Kempner, March 30, 1928; Daniel W. Kempner to Herman Nussbaum, March 30, 1928; R. I. Mehan to Daniel W. Kempner, March 30, 1928; William A. Lighter to Daniel W. Kempner, March 30, 1928; Herman Nussbaum to New Orleans Cotton Exchange, March 31, 1928; R. I. Mehan to Francis Hurst, March 31, 1928.

60. William A. Lighter to Daniel W. Kempner, March 14, 1928.

61. William A. Lighter to Daniel W. Kempner, March 16, 1928.


63. See all correspondence from this period.


65. Daniel W. Kempner to: Bank of New York; R. A. Philpot; Seaboard National Bank; National City Bank; Guaranty Trust Company; Equitable Trust Company. All letters dated March 27, 1928. All businesses located in New York City.


67. Notices sent to all spinners, March 29, 1928.
CHAPTER V

Pragmatically, the international furor engendered by the Reichsgericht's decision in Otto Schoen's case and the spinner's subsequent suicide, virtually eliminated the gambling defense as a useful plea. Thereafter, the spinners adopted alternative defenses and tactics designed to raise the gambling issue obliquely. They also tried to embarrass H. Kempner by complaining about the firm's business practices to the New York Cotton Exchange. In the end, however, German economic considerations and Nazi racial policies affected the cases more than any planned action by either the Kempners or the spinners.

The lawsuit against Kolbermoor, one of H. Kempner's strongest cases, began in 1928. Suing as the holder in due course of Lighter-Nussbaum's claims against the spinner, H. Kempner claimed $163,309.44 in liquidated damages plus 7% interest accruing from January, 1928. In response, E. L. Heinemann, Kolbermoor's attorney, presented a three part defense. First, he linked gambling between private individuals for personal gain with a flat denial of mill complicity. The contracts were purely speculative, he
argued, and, therefore, void as violations of German Civil Code section 764. To support this contention, Heinemann denied that the mill, as a corporation, had any intent to gamble. Instead, he presented evidence that the conversion contracts allegedly between Kolbermoor and Lighter-Nussbaum were not part of the mill's ordinary course of commerce. Heinemann argued that Hapke, his sub-agent Edward Dyckhoff and two mill directors, Jordan and Heidenreich, intended to gamble for private gain when they entered the contracts. He contended further that Lighter-Nussbaum either knew or should have known of this intent, and of the mill's innocence, when the futures profits were sent, not to Kolbermoor, but to accounts at the Schweizerische Creditanstalt in Zurich. Owners of the accounts were: Hapke, apparently earning commissions from Lighter-Nussbaum while skimming profits from the spinners; Dyckhoff; Jordan; and Heidenreich. Thus, according to Heinemann, Lighter-Nussbaum, as Hapke's principals, both knew and approved of the gambling. Therefore, the contracts were void. Lighter-Nussbaum's proper recourse was to sue Jordan and Heidenreich who, for acting outside the legal scope of their duties by speculating with mill monies, had since been fired.¹
Heinemann argued alternatively that, after liquidating the contracts in July 1924, Lighter-Nussbaum continued to carry the contracts on its records and pocketed the fraudulent profits. Kolbermoor declined to pay the losses until proof of their existence had been submitted.²

Finally, Heinemann asserted that Lighter-Nussbaum, in refusing to hedge the contracts, failed in its legal duty to protect the spinner from financial harm. Since the laws of equity prevented plaintiffs from profiting by their own negligence, Lighter-Nussbaum were barred from collecting against the spinners.³

Lifschutz, for the plaintiffs, cross-pleaded that Lighter-Nussbaum knew nothing of any private speculations between their agent, Hapke, or his sub-agent, Dyckhoff, and the mill's directors. Lighter-Nussbaum admitted sending the profits to the Swiss bank accounts, but contended this was done to help Kolbermoor evade the imposition of income taxes. Lifschutz, in pleading income tax evasion, intended to embarrass Kolbermoor and its directors. More important, he hoped to raise an oblique issue of his own: criminal evasion of lawful taxes.⁴

Lifschutz complained that Hapke, Dyckhoff, and the Kolbermoor mill, through its directors, had conspired to
defraud Lighter-Nussbaum. Therefore, even if the speculative intent did exist, Lifschutz claimed that as an innocent party to the transaction, Lighter-Nussbaum should be protected from the depravations of both its agent and the companies with whom he had conducted business. ⁵

On this first issue, Lifschutz' position was nearly identical to Heinemann's. Each asserted the innocence of his own client, imputed the intent to gamble to the other, and blamed Hapke and Dyckhoff for all the irregularities.

Second, Lifschutz asserted that Lighter-Nussbaum had executed the contracts according to the customs and rules of the New York Cotton Exchange. Taking the same position about production of the slips that the Exchange had, Lifschutz asserted that, unless a spinner formally complained to the exchange, Lighter-Nussbaum had no responsibility to produce the transaction slips. ⁶

Lifschutz rebutted Heinemann's third charge by arguing that the conversion contracts specifically excluded hedges. Therefore, Lighter-Nussbaum had no individual responsibility to protect the spinners. ⁷

On June 16, 1930, while Otto Schoen still enjoyed his lower court victories, Kolbermoor won its case in the Landesgericht. Dan immediately worried that the mills, by
imputing all responsibility for the losses to individual members of their boards of directors, had found another workable defense. Each mill could save its reputation—and its finances—by sacrificing a scapegoat. In the financially troubled times of the Great Depression, Dan knew that the most likely scapegoats in any of the suits were also apt to be those least able to satisfy adverse judgments. For this reason, Dan insisted that Lifschutz appeal the Landesgericht's decision.⁸

The Oberlandesgericht at Hamburg rendered its appeal decision on December 11, 1930, slightly more than two months after Schoen's victory at the Reichsgericht. Responding in part to the current international outrage, the court ruled that conversion contracts were legal in Germany if made according to the rules of, and executed on, any recognized commodities exchange. After making this concession, the court still found Kolbermoor's gambling plea persuasive. It ruled that the evidence proved that the actions of the parties, despite the form of their agreement, showed both the intent, and the fact, of gambling.⁹

Elated by the partial victory, Lifschutz encouraged Dan to press the appeal forward and boldly asserted his confidence in securing a complete victory from the
Reichsgericht. Dan considered the cost of appeals before deciding. The bond required from a foreign plaintiff amounted to the sum of all court costs plus opposing lawyers' fees. Dan could not simply pledge the amount over his signature. As a non-resident plaintiff, he had to deposit security with the court. This provision would not have been particularly troublesome during ordinary times. However, 1931 was not a good year for H. Kempner.10

The firm suffered another serious financial reverse, in addition to the spinners' losses, when the Great Depression began. Sugarland Industries, of which Dan was president, almost failed because the Imperial Sugar Company had overextended credit to a number of fig preservers. When the depression struck, the fig preservers could not pay their bills. Sugarland, already unstable from inadequate capitalization, suffered cumulative losses which exceeded $3,000,000.11

The Sugarland losses, coupled to the spinners' losses, left H. Kempner, though far from bankrupt, without substantial cash reserves. After carefully considering the probabilities, Dan decided to appeal the Kolbermoor decision, depositing low grade cotton worth nearly $20,000 for surety. On October 14, 1931, H. Kempner won its second
legal victory in the suit against Kolbermoor. The Reichsgericht vacated the two previous decisions and remanded the case back to the Oberlandesgericht, requesting more evidence on Lighter-Nussbaum's conspiracy claim.\textsuperscript{12}

Zulow happily predicted a complete victory for H.

Kempner:

As a rule this is a 100% verdict in favour of the appellant. The Reichsgericht gives its reasonings and the lower court cannot help following this for in a second appeal it would prevail anyhow. If all facts had been clear the Reichsgericht would have given a final verdict there and then, but it appears that the defendants are disputing details and amounts and it is now the job of the Oberlandesgericht to fix these. Either party can then appeal again but as to the juridical principals underlying the case it is now decided and the pleas of a gamble is eliminated.\textsuperscript{13}

The Oberlandesgericht refused to bow to the Reichsgericht's pressure and again found for Kolbermoor. H. Kempner again appealed. The Reichsgericht again remanded the case for a new hearing on the conspiracy issue, with a hearing scheduled in the Oberlandesgericht for December 14, 1933.\textsuperscript{14}

During the two years while the Reichsgericht and Oberlandesgericht bickered over a final solution to the Kolbermoor litigation, the other spinners utilized several
tactics to divide Dan's attention and to keep him constantly on the defensive. First, Kiener filed a business practices complaint against H. Kempner with the New York Cotton Exchange. Then the spinners exerted pressure on the Finanzamt, the German currency control office, to satisfy both their needs and its anti-American sentiment, by refusing to issue export permits for settlement amounts and court awards. Later, Heinemann used Adolf Hitler's Aryan supremacy policy to have Lifschutz disbarred.

Kiener moved first, hoping to cause H. Kempner the same intense embarrassment in America that Otto Schoen's actions and Lifschutz's tax evasion pleadings had brought to the spinners in Germany. In early March 1931, Kiener requested that the Business Conduct Committee of the New York Cotton Exchange determine if H. Kempner actually executed the orders transmitted to it by Lighter-Nussbaum. Clayton Rich, head of the committee, requested that Ike,

\[\ldots\text{please inform this Committee what was your connection with W. A. Lighter & Company. ...and H. Nussbaum... during the years 1924-1928 with respect to certain contracts entered into for the account of Jean Kiener. ...Did you, on or about the dates mentioned, report to either W. A. Lighter... or H. Nussbaum... that you had executed the following trades upon the New York Cotton Exchange, and if so, please advise this Committee through what New York houses this business was done.}\]
The request for information required specific "dates, prices, etc." which pertained to a lengthy list of futures purchases, transfers or sales.\(^{17}\)

Ike and Dan immediately comprehended Kiener's tactic. Unless effectively countered, the complaint stood to ruin H. Kempner's standing throughout the American cotton industry. Yet, as Ike and Dan knew, they could not comply fully with Rich's request because part of the requested evidence never existed. The strategy they devised was to present the appearance, but not the fact, of cooperation. Dan, replying for Ike, dodged the main thrust of the inquiry. In a carefully worded exposition which, on its face, was absolutely truthful, Dan wrote:

I might say that neither my brother [Ike] nor the firm of H. Kempner, of which he is a member, entered into any contracts whatsoever with Jean Kiener Fils. . . . Such futures as . . . H. Kempner executed for W. A. Lighter . . . and H. Nussbaum . . . during the above mentioned period were for the account of these two firms, the Kiener firm not being known by us in the transaction. I believe, therefore, you will agree with me that such business executed by our firm for Messrs. Lighter and Nussbaum should be considered as privileged and confidential, and such information as you now ask should not be furnished without . . . [their] consent. . . . It may be of interest to you to know that these matters have been referred to the Department of State and
the Department of Commerce in Washington
by Lighter and Nussbaum. . .[these] two
departments are endeavoring to alter
decisions and laws of Germany highly
discriminatory against American
citizens.19

On March 15, Rich rejected Dan's claim that the
information was privileged and repeated his request for
information about the transactions.19 This time, Ike
responded. His reply was a mixture of obfuscation,
half-truth and outright falsehood. He denied owning any
stock in either the W. A. Lighter or Herman Nussbaum
companies. Using nearly the same vocabulary as Dan, he
admitted that,

At one time several years ago, my firm
carried contracts that were executed for
the Lighter and Nussbaum corporations
jointly, the firm of Jean Kiener Pils
not being known by my firm in the
transaction at that time. . . .Neither
Mr. Lighter nor Mr. Nussbaum have any
complaint whatsoever against my firm for
the execution of these orders.20

Ike asserted that Kiener had "welshed" on its contracts and
refused to pay legitimate market losses. He added that,

since the dispute was in litigation, Lighter-Nussbaum
requested that neither H. Kempner nor the New York Cotton
Exchange furnish any information to Kiener about the
transactions.21 Ike closed his refusal to supply
substantive information with his,
. . . personal assurance, however, that my firm made no reports to Lighter and Nussbaum of orders executed on the New York Cotton Exchange that my firm did not actually do on the New York Cotton Exchange through regular brokers.  

There were at least two reasons that Ike's denial of malfeasance failed to convince or satisfy the Business Conduct Committee: (1) he never denied the validity of Kiener's complaint; and (2) he never flatly stated that H. Kempner had executed all the orders. On April 17, 1931, Acting Chairman Marshall Greer sent a firmly worded demand for information to Ike:

This committee does not desire at this time any information as to your business transactions with W. A. Lighter or H. Nussbaum. What the Committee desires is information in regard to your handling of the transactions referred to in Mr. Rich's [previous letters]. We now repeat our request that you furnish us with all the information you have.

Ike, still trying to appear cooperative, again declined to furnish the information, this time because,

. . . there are certain rules of ethics that I feel must be observed in connection with our customers.

Rich immediately submitted both of Ike's letters to the Business Conduct Committee. When the Committee, empowered to suspend or revoke exchange memberships, still refused to accept his word that the transactions were valid,
Ike knew he was cornered. He finally sent Rich a sworn deposition on June 6, 1931, detailing the transactions. However, Ike insisted that Rich promise,

\[. . .\text{that the information given in this letter will not be transferred to any of the foreign spinners, for I am sure that they are asking for the information only to force Lighter and Nussbaum. . .to show their hands so that the defendants can better prepare their defense.}\]

Ike's deposition stated that H. Kempner's only connection to Lighter-Nussbaum was as banker and broker and contained four pages of detailed transactions to establish the execution of all orders. The risk Ike took in lying to the committee about the orders was, he thought, acceptable. He already had Rich's private assurance that none of the spinners would see the deposition. Further, he believed that, by submitting a complete chain of transactions, even though many were false, he could convince the committee of his position. If the committee chose to disbelieve him, the burden of proof then fell on them.\(^27\)

The bluff worked. After reading the affidavit, the Business Conduct Committee voted to close its investigation.\(^28\) Rich returned Ike's statement to him with the notation:

\[
\begin{align*}
\text{I return herewith your communication} \\
. . .\text{which has been discussed in} \\
\text{Executive Session of the Committee, and}
\end{align*}
\]
under the strict pledge of each member 
that the contents will not be 
disclosed.29

With the deposition safely back in his hands and the matter 
closed, Ike's personal and business reputations were safe. 
He then boldly attempted to convert the incident to his own 
advantage, asking Rich,

...whether you could not consistently 
write my firm that your letter of June 
9th in which you stated that the 
investigation was closed, meant that the 
New York Cotton Exchange found no 
unethical conduct or improper 
transaction whatsoever.30

Rich, no longer committee chairman, forwarded the 
request to his successor, Thomas F. Russell, Jr.31 
Russell refused to issue the desired exoneration, sending 
instead only an extract of the Committee's minutes:

...the firm of H. Kempner...has made 
a full and satisfactory reply to the 
matter under investigation;...the 
committee therefore considers their 
investigation closed.32

Aware that this guarded statement was not a complete 
exoneration, Ike asked another committee member, Harry Goss, 
to send him a "letter of interpretation on New York Cotton 
Exchange letterhead."33 Goss refused to act unilaterally, 
but did ask the committee as a whole to issue a resolution 
in H. Kempner's favor. He requested Ike to,
...write me immediately just how you want the resolution worded. I will do my darndest [sic] to get the... Committee to write you a letter to that effect. 34

By return mail, Ike sent the desired letter. However, according to Goss, the Business Conduct Committee took the position that,

...in their opinion, the statement they made to you and the copy of the minutes sent, is all they can do in the premises. 35

This was the final communication about Kiener's complaint. Although Kiener's tactic caused great discomfort for Ike and Dan, they adroitly avoided catastrophe and nearly turned the episode to their own profit.

The Kempners needed every obtainable advantage to parry the legal sparring which continued unabated in the German courts. Dan hoped, not only for favorable judicial decisions, but also to exert sufficient pressure on the spinners so that they, like Kolbermoor, would negotiate settlements.

The spinners, in fact, did bargain seriously. On May 5, 1931, Stadtbach, anticipating an adverse decision, offered to settle for $18,000 with each party paying its own costs. Lifschutz advised rejection of the offer because a favorable court decision would yield a higher recovery.
Neethe agreed, but suggested that Lifschutz offer to settle for $50,000 and accept any amount Stadtbach offered over $40,000. Stadtbach countered with $35,000. Neethe authorized Lifschutz, if confident of a judicial victory, to refuse.\(^{36}\)

On June 25, Lifschutz jubilantly reported that the Oberlandesgericht had ruled in H. Kempner's favor and awarded damages of $45,000. The court based its decision on two grounds. First, the conversion contracts were valid and enforceable agreements between legitimate business entities. Therefore, the gambling plea was inapplicable. Second, and equally critical, Lighter-Nussbaum did not have to prove execution of the contracts by presenting the transaction slips or any other tangible evidence. Sworn testimony from members of H. Kempner's firm was sufficient.\(^{37}\) The Galveston News noted the importance of the case in which,

\[\ldots\text{The New York, New Orleans, and many other cotton exchanged [had taken] a stand. \ldots[because] the stand taken by the German spinners struck at the very foundation and structure upon which the business of cotton exporting had been built.}\]

Stadtbach, aware of the case's precedential importance to the remaining spinners, promptly appealed. On April 27, 1932, the Reichsgericht, after sustaining all Lighter-
Nussbaum's main arguments, upheld the Oberlandesgericht's decision. It awarded Lighter-Nussbaum damages of "at least" $7,643.50 plus 7% interest from March 21, 1925. The Reichsgericht then remanded the case back to the Oberlandesgericht for precise resolution of the damage amount. 39

The victory encouraged Dan to authorize Lifschutz to sue each of the spinners in early 1932. To prevent Germany's four-year statute of limitations from barring H. Kempner's claims and to reduce the prospective amounts of court bonds, Lifschutz filed a limited action against each spinner. Lifschutz submitted identical pleadings to his successful ones in the Stadtbach case but claimed only a portion of the alleged damages. If and when a final judgement favored H. Kempner, Lifschutz planned to file an amended damage claim and ask court approval under stare decisis and res judicata. Under these terms, Lifschutz then sued Forchheim, Horachuch, Bayerlein, Leuze, Kulmbach, and Kuchen. 40

H. Kempner still had to post bonds in the cases which totaled $54,194.00. Dan wanted the National Surety Company of New York, one of the United States' largest bonding companies, to arrange the bonds through a German agent.
This arrangement, if workable, would permit H. Kempner to retain its security collateral, low grade cotton, within the United States. However, the spinners insisted that the bonds be posted though, and the collateral deposited with, the Deutsche Bank und Disconto-Gesellschaft. Dan acquiesced, partly to show good faith on what he regarded as a minor issue. More importantly, he needed to turn his attention to two emerging problems, neither of which he could control and both of which threatened his cause. 41

The first was financial; the second, racial. Germany's continued internal monetary instability compelled Lifschutz to claim all damages in United States currency because,

... owing to the deplorable international conditions, and particularly in Germany right now... [there is] the danger that the German mark might be seriously affected... I want to avoid the question of any decline in the mark affecting... judgments. 42

Lifschutz had two options if judgments were issued in any of Germany's various currencies: conversion immediately either into U. S. currency or, failing that, into merchandise such as cotton. 43

Complicating Lifschutz's actions were Germany's currency export control laws which became effective in July, 1931: if permission to export the proceeds of lawsuits had
not been obtained prior to final court decision, the case would be dismissed.\textsuperscript{44} Lifschutz immediately applied in all cases for the required permits. However, Neethe learned "confidentially" that even if the spinners lost their cases, the Finanzamt might refuse permission to export.\textsuperscript{45} He instructed Lifschutz to find out, in any way possible, what position the Finanzamt would take and whether any judgment or claim could be remitted at present from Germany to this country.\textsuperscript{46}

In addition to exploiting the currency difficulties, Heinemann raised a more serious barrier to H. Kempner's concluding the spinners' litigations successfully. He invoked Germany's racial discrimination policy, codified as the "Hitler Decree" of April 7, 1933, to disbar Lifschutz. Heinemann had discovered that Lifschutz's maternal grandmother had been Jewish. This, despite the fact that Lifschutz was a deacon in the Lutheran Church, was a sufficient degree of Jewishness for disbarment. Heinemann, in pursuing a trial lawyer's expedient to disadvantage the Kempners by compelling them to change lawyers in the midst of difficult, lengthy litigation, either failed to foresee the Hitler Decree's potential long-term, cumulative effects or, having seen them, chose to ignore them in favor of present necessity.\textsuperscript{47}
Lifschutz comprehended Heinemann's intent clearly:

I believe...that it will be very difficult for any other counsel to continue these cases...you best will be able to judge that to another counsel it will be simply impossible to work over the files which are mountain high and very complicated, and to go through the extremely complicated matters.

Lifschutz bitterly noted that only his heredity, not his capability cost him his position:

...the position of the counsel is not at all mentioned. That I, in my career of 17 years as attorney, and also on the scientific field, won a great recognition as it is known all over Germany, does not come at all into play. Nor comes into play the fact that in the year 1931 I was named as one of the Share Commission which was formed for the purpose of forming a new share and stock law.

Lifschutz, in closing, begged Neethe to,

...cause a very energetic intervention to be made through the American Embassy [in Berlin] at once. I already took the liberty to speak to the Counsel for Legation, Mr. Gordon in Berlin and with the American Commercial Attache, Mr. [Lawrence] Groves.

Groves, after consulting with the American charge d'affaires, refused to aid Lifschutz because "the Embassy, of course, cannot mix itself into interior politics of Germany." On learning of Groves's decision, Neethe
wrote directly to Secretary of State Cordell Hull complaining about the Hitler Decree which,

...will mean an absolute deprivation of my clients' rights to proceed against the defendants in the courts of Germany, and to that extent, will wholly deprive them of their property, viz, the right of action they have against these spinners. ... The cases are of great importance, not only to my clients, by reason of the amounts involved, but to the whole American cotton trade, owing to the fact that the validity of the rules of the New York and New Orleans Cotton Exchanges are directly before the German Courts.

Neehe sent a similar communication to Senator Tom Connally, who cabled in response,

Have taken up with State Department matter in which you are interested and am doing everything possible to hasten action.

The State Department's response to both Dan and Connally was to telegraph the American Embassy in Berlin, outlining the facts, and,

...directing it to follow situation closely with view to being helpful in any way that may be possible.

However, the United States was powerless to help unless "conditions", the strains in German-American relations resulting from the Young Plan payments and war reparations, improved.
Dan enlisted Zulow's aid in trying to restore Lifschutz's privileges. Zulow contacted Dr. Friedrich Brauer,

...an old member of the Nazi Party and [who] showed every appreciation of the case. He promised to get in touch with the powers that be and do his best to help us. I suggested the following alternative: in case a general license could not be obtained, to try and get permission for Dr. L[ifschutz] to proceed with our cases. Failing this it will be necessary to force L[ifschutz to give all case materials] to a successor and allow the successor to consult [with him].

While conceding Lifschutz's importance to the litigations, Zulow discounted the idea that no one else could effectively pursue the suits. He suggested that any of Lifschutz's five partners, all of whom were Arian, were competent to represent H. Kempner. 57

Dan sailed to Europe in early June, 1933. In Paris, on July 15, 1933, Dan conferred with Heller, Zulow, Lifschutz and Hans Loening, Lifschutz's law partner and his successor as chief European counsel for the spinners' litigations. Loening was thirty-two years old, had an American wife, spoke fluent English, and most importantly, was "not in accord with Nazi policies." 58
Lifschutz, "degraded and dishonored" by his disbarment on June 23, 1933, was despondent—almost to the point of suicide. A "spendthrift," he was also in desperate financial straits. Lifschutz had,

... lived up to his income the last five years, even building a house at the cost of 400,000 marks. Today his Gentile clients in Germany refuse to pay him the past services and he is really without means of living.

Desperate and insolvent, Lifschutz flatly refused to brief Loening about the cases unless compensated for his time. Dan's initial reaction was negative. However, after consulting with Zulow, Dan agreed to pay Lifschutz a fee of $1,550. Dan, Lifschutz and Loening also agreed that Loening and Lifschutz would split the contingency fee, with each man's earnings dependent upon the proportion of time spent on the suits.

When Dan reviewed the status of the spinners' litigations with Loening in late 1933, he found that Schoen had been irrevocably lost; Stadtbach, apparently won. Kolbermoor, and the remaining suits, were still pending. Finally, after two years of contentious appeals, the Oberlandesgericht prepared to issue another decision in the Kolbermoor suit. However, on December 13, 1933, one day before the hearing, Kolbermoor offered and Dan accepted a
settlement of RM290,000 (approximately $90,000). Each side agreed to pay its own attorney fees and court costs. 63

This settlement and the Stadtbach judgment, even though still under appeal, encouraged Dan to press forward with his claims. Although aware of Germany's currency export restrictions, Dan did not fully sense their complexity until he actually tried to remove cash from Germany.
ENDNOTES


2. Ibid.

3. Ibid.


5. Ibid.

6. Ibid.

7. Ibid.


9. Ibid.


12. Alexander Lifschutz, Case Summary: Kolbermoor, 1945; *Lighter-Nussbaum vs. Kolbermoor* (Oberlandesgericht, Hamburg, Germany, October 14, 1931); Alexander Lifschutz to H. Kempner, October 19, 1931.


32. Thomas F. Russell, Jr. to Isaac H. Kempner, September 14, 1931.

33. Daniel W. Kempner to Harry Goss, September 17, 1931.

34. Harry Goss to Isaac H. Kempner, October 19, 1931.

35. Daniel W. Kempner to Harry Goss, October 21, 1931; Harry Goss to Isaac H. Kempner, November 11, 1931.


38. Galveston News, July 12, 1931.


40. Alexander Lifschutz to John Neethe, August 28, 1931.

41. Daniel W. Kempner to Adolph Zulow, February 12, 1932; Adolph Zulow to Daniel W. Kempner, April 2, 1932.


43. Daniel W. Kempner to Alexander Lifschutz, July 31, 1932.


46. Ibid.

47. Alexander Lifschutz to John Neethe, April 26, 1933. For a discussion of Hitler's intent to use the twin tactics of terror and racial discrimination as methods of social control and power consolidation, see: Craig, Germany, 1866-1945, pp. 569-672.

48. Ibid.

49. Ibid.

50. Ibid.

51. Lawrence Groves to Alexander Lifschutz, May 3, 1933.

52. John Neethe to Cordell Hull, May 10, 1933.

53. Senator Tom Connally to John Neethe, May 19, 1933.


55. William Phillips, Acting Secretary of State to Senator Tom Connally, June 7, 1933. The United States had followed the rest of Europe into a policy of non-antagonism toward Hitler. Not until 1938 did the United States actively intervene on behalf of Jews against Nazi terrorism. Roosevelt invited thirty-two other nations to establish a joint committee to facilitate the emigration of Jews from Germany and Austria. However, neither the United States, nor any other nation, provided adequate asylum. The President arranged for approximately 15,000 refugees on visitor's visas received permission to remain in the United States, but did little to combat public or congressional opposition to relaxation of immigration quotas. International unwillingness to protest

56. Adolph Zulow to Daniel W. Kempner, May 30, 1933. According to Colonel Richard F. Frank, U. S. Army Judge Advocate General's Corps, who prosecuted Nazi war criminals at the Dachau Concentration Camp Trials in 1945 and 1946, army prosecutors employed alternate criteria in determining which former Nazis should have their civil liberties reinstated. Men such as Brauer who became Nazis before Hitler's accession to power in 1933 received careful, thorough scrutiny since they had joined the Nazi Party voluntarily. Others, who joined in response to Hitlerian decrees used by the Nazis to establish control over all aspects of German life, received their civil liberties almost immediately, unless evidence existed to establish more than a putative relationship to the party.

57. Ibid.; Adolph Zulow to Daniel W. Kempner, May 20, 1933.

58. Daniel W. Kempner to Isaac H. Kempner, July 26, 1933. Loening, to maintain his legal practice, became a nominal Nazi during the mid-1930s. However, during World War II, he constantly jeopardized himself and his family by helping many Jews to escape from Germany. Philip Friedman, "Was There An "Other" Germany During the Nazi Period?" *Vivo Annual of Jewish Social Science* (1955), pp. 82-127, documents evidence of sympathy for, and aid to, Jews in Hitlerite Germany.

59. Ibid.

60. Ibid.

61. Ibid.

CHAPTER VI

From late 1933 until Adolf Hitler's invasion of France on May 10, 1940 plunged Europe into total war, Dan Kempner labored steadfastly toward two ends: (1) winning or settling the remaining cases; and (2) exporting or investing the litigation or settlement proceeds in compliance with Germany's restrictive currency laws. He had little success in achieving either goal.

During these years, H. Kempner received two adverse final decisions from the Reichsgericht: Hornschuch, December 8, 1934; and Bayerlein, March 4, 1936. It gained only one Reichsgericht victory: Kulmbacher on January 4, 1938. H. Kempner settled three suits: Kuchen, March 16, 1936; Forchheim, March 25, 1938; and Leuze, April 28, 1939. The onset of World War II interrupted four cases: Bourcart; Jacquel; Kiener; and Marchal.¹

The Reichsgericht decisions in Hornschuch and Bayerlein both turned on the gambling question even though neither spinner specifically pleaded the defense. However, during testimony in the Hornschuch proceedings, Mrs. Fritz Hornschuch baldly asserted that she and her husband, who

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owned the mill jointly, intended to gamble when they entered the conversion contracts with Lighter-Nussbaum. Defense testimony in the Bayerlein suit was similar. These statements, which the mill owners buttressed with bank statements and audit reports, convinced the trial and appeals courts. The Reichsgericht's adverse judgement in the Hornschuch case cost H. Kempner $16,938.50 ($14,558.63 on the conversion contracts plus court costs of $2,379.87). In the suit against Bayerlein, the cumulative loss to H. Kempner was $136,719.12 ($132,737.74 on the contracts plus $3,981.38 in court costs).\(^2\)

On a happier note, the Reichsgericht's decision in the Kulmbacher suit was very similar to its Stadtbach decision. The court found no evidence of gambling, held the contracts valid, determined that H. Kempner's testimony was sufficient to establish contract performance, and ruled that H. Kempner had no responsibility to hedge the contracts. The Reichsgericht awarded H. Kempner 737,008.36 marks, the equivalent of $211,579.47 plus 5% interest from January 1, 1930 at the 1929 mark to dollar conversion rate of 2.45:1. However, by 1938, the mark to dollar ratio had deteriorated to 4.2:1, making the award worth only $175,478.18. Since this was substantially less than its alleged loss, H. Kempner appealed the Reichsgericht decision. In January,
1939, Kulmbacher settled the ancillary suit by paying H. Kempner an additional 190,000 marks ($28,571.43). Although Kulmbacher's total payment of 927,008.36 marks ($204,049.36) was still less than the original Reichsgericht judgement, Dan terminated the litigation rather than incur any more expense. During the suit, H. Kempner paid $34,907.83 in court costs, attorneys' fees, bonds, and other miscellaneous expenditures. The net gain after nearly seven years of litigation was $169,141.53.3

Just as H. Kempner's success in the Stadtbach, Kolbermoor, and Kulmbacher suits persuaded other spinners to negotiate, so the spinners' victories in Schoen, Hornschuch and Bayerlein encouraged H. Kempner to settle. In the Kuchen, Forchheim and Leuze suits, the opposing sides, after years of expensive, time-consuming litigation, simply determined that the risks and costs of continued litigation far exceeded any chance for complete victory. As a result, these suits ended with mediated settlements before the Reichsgericht rendered any final judgements. In the Kuchen suit, H. Kempner claimed $39,591.04, settled for $12,489.34 (31,323.26 marks), incurred $1,304.43 in expenses, and netted only $11,184.91. In Forchheim, H. Kempner claimed $85,684.46, settled for $47,619.05 (200,000 marks), incurred $1,761.24 in expenses, and netted $45,857.81. In Leuze, H.
Kempner claimed $95,427.52, settled for $51,190.48 (215,000 marks), incurred $2,942.77 in court costs, and netted $48,247.71.\(^4\)

In the cases which ended by judicial decree or with a settlement prior to the outbreak of World War II, H. Kempner claimed $1,344,932.32, recovered $208,298.87 (1,754,597.18 marks), and incurred $167,562.04 in court costs and attorney's fees.\(^5\)

In 1940, however, H. Kempner still actively pursued the cases against Bourcart, Jacquel, Kiener, and Marchal. The four mills were in Alsace-Lorraine, that frequently contested territory on the Franco-German border. Prior to German unification in 1870, Alsace-Lorraine belonged to France. In 1871, Germany seized and conquered the territory. In 1919, The Treaty of Versailles returned to province to France. These repeated national transformations gave a Alsatian law a hybrid character: it was French in substance and German in procedure.\(^6\)

French law prohibited the gambling plea in transactions between legitimate business entities. Robbed of their most potent weapon, the Alsatian spinners advanced only a two part defense. They denied all liability to pay the alleged losses until Lighter-Nussbaum introduced complete evidence to establish execution of the original purchase, and all
subsequent transfer, orders. The mills also charged
Lighter-Nussbaum with negligent failure to minimize the
losses through hedge purchases, an allegation which, if
sustained, would effectively exonerate the spinners since a
plaintiff cannot benefit from his own negligence.\(^7\)

Progress of the cases through the French judicial
system was tediously slow, despite repeated formal requests
from the American Embassy in Paris for expedited handling.
Beginning in 1930, the spinners won convincing victories
when the trial and lower appeals courts accepted their
position that H. Kempner must prove its losses and sustained
their requests for court supervised audits of Lighter-
Nussbaum's and H. Kempner's books. H. Kempner appealed
these procedural rulings to the French Supreme Court at
Paris. However, before the Supreme Court issued any
rulings, war erupted between France and Germany on May 9,
1940. The losses claimed and expenses accrued in these
suits were high. Lighter-Nussbaum sued the Alsatian
spinners for a total of $779,896.88: Bourcart, $192,754.15;
Jacquel, $131,757.30; Kiener, $20,831.26; and Marchal,
$434,554.17. Legal expenses in the four Alsatian suits
totalled $24,224.50.\(^8\)

On May 9, 1940, after eighteen years of disharmony,
twelve years in litigation, and fifteen lawsuits, H.
Kempner, against cumulative alleged losses of $2,124,829.20, netted only $16,512.33, a paltry return of 0.77%—less than one percent. 9

Although this net gain was painfully small, Dan's predicament was to find an effective use for the gross. When Europe and Asia joined the United States in the Great Depression in July, 1931, Dan confronted the twin difficulties of either exporting funds from, or investing them in, Germany. Neither alternative, in those financially unstable times, was an easily achievable goal.

The international economy was so erratically volatile that, beginning November 13, 1931 and continuing until 1940 at irregular intervals, the U.S. Department of Commerce issued a series of "Special Circulars" to its biweekly "Foreign Financial News," a $1.00 per year subscription service maintained for American business interests. The extra editions published "the most recent information and data on exchange restrictions in foreign countries." They delineated the extent of the financial crisis within each country, explained fully the nature and scope of controls, and defined the process, if any, of currency exportation. The "Special Circular" of December 15, 1933, as an example, contained materials for thirty-five European, African, and
Asian nations. The Commerce Department planned a subsequent "Special Circular" for Latin American countries.\textsuperscript{10}

The "Special Circular" noted that Germany, like many other debtor nations, had strict controls on currency exportation to prevent a financial drain.\textsuperscript{11} However, German currency controls were also integral part of Hitler's plan to control all aspects of business: management; labor; production; and marketing. By conferring absolute discretionary power to various administrative agencies such as the Finanzamt (the German Commercial Secretariat in Berlin), the Nazi party effectively nationalized business without changing ownership patterns. Empowered by these broad grants, the agencies impartially ignored both domestic and foreign private legal rights. They also prohibited judicial review of their actions.\textsuperscript{12}

One particularly successful control resulted from monetary use specialization. The German Economic Ministry, headed by Hjalmar Schacht, devised a bewildering array of currency types, each with its own special set of purposes and rules. The "Special Circular" enumerated Germany's six categories of currency for foreign held assets, all subsumed under the general appellation of "blocked marks." The category most important to Dan was "Kreditsperrmark," also known as the "Sperrmark" or "Blocked Credit Mark."
Sperrmarks, including assets gained through judicial decree or settlements, were generally used for credit repayments to foreigners after August 3, 1931. The German debtor discharged his liabilities by depositing Sperrmarks to a foreign creditor's special Deutschebank account. The creditor then negotiated with the Finanzamt for permission to export or invest the Sperrmarks.¹³

Kreditsperrmarks did not circulate freely. All Kreditsperrmark transactions required the Reichsbank's approval, a time consuming and complicated process.¹⁴ The regulations governing their usage indicated that their purpose was political as well as economic. They could be used to control the movement of foreigners within Germany as well as to prohibit the exportation of capital:

[They] can also be used for local travel, but except for the travel of the actual owner of the marks and his immediate family, can only be used in an amount of Reichsmarks 1,200 per person per month and then only for staying at recognized German Health resorts. The purchase of securities with Kreditsperrmark also has its disadvantages, as the securities must remain in a blocked account in the Reichsbank for five years and can only be sold or transferred with permission of the Reichsbank.¹⁵

Because their uses were so highly regulated, Sperrmarks circulated at 22-24% less than their face value. Dan
Kempner, saddled with 1,754,597.18 Kreditsperrmarks, searched throughout the 1930s for ways to export or invest them at their full, undiscounted rate. The frustrating barriers he met at every turn were similar to those encountered by other businessmen. 16

The 290,000 Sperrmark settlement from Kolbermoor, which had been deposited into a blocked joint account for Lighter and Nussbaum at the Deutschebank branch in Bremen, was Dan's introduction to Germany's financial maze. Dan operated from with a strong sense of urgency as he attempted to gain control over H. Kempner's German holdings.

Ike's grown son, Harris Kempner, who was currently traveling in Europe, shared his uncle's fears. All three men felt that war was immanent. Harris urged his father and uncle to worry less about making a profit from the Sperrmarks, and to concentrate more on just breaking even— or even taking a slight loss. 17

Dan immediately applied to the Finanzamt, the German Commercial Secretariat in Berlin, for permission either to export the entire amount or to allocate part of it for current legal expenses while exporting the balance. 18 The Finanzamt, however, refused to act, arguing that Lighter-Nussbaum, and not H. Kempner, was the lawful owner. When the U.S. Embassy protested and after Lifschutz, still
actively aiding the cases despite his disbarment, presented Lighter- Nussbaum's assignment of interest to H. Kempner, the Finanzamt conceded the point. However, it adopted another obstructive tactic—extortion. The Finanzamt agreed to release 100,000 Sperrmarks for immediate exportation and to allocate the remainder for payment of local court costs if Dan would surrender the 22% discount. Dan refused to be blackmailed, "as long as hope continues that all or substantial part of the sum may be transferred without discount." The Finanzamt promptly disallowed H. Kempner's entire application.

Dan asked Senator Tom Connally to intervene, urging the exertion of pressure on Germany through the U.S. Department of Commerce. Subsequently, the Commerce Department instructed Douglas Miller, Commercial Attache in Berlin, to render assistance.

Miller and Lifschutz met with Finanzamt officials. After intense negotiations, the Finanzamt issued a permit allowing H. Kempner to use 170,000 marks for court costs and to export the balance at the rate of 10,000 marks per month. The export permit, however, was only valid for three months. After that, if Dan wished to continue exporting marks, he must apply for, and receive, another permit. The Finanzamt was willing to release additional marks if Dan would use
them to purchase goods for export to America.\textsuperscript{23} Lifschutz promptly dismissed this suggestion since H. Kempner was strictly a cotton, and not a general, merchant.\textsuperscript{24}

Zulow, also active in the negotiations, urged the Finanzamt to release both the January and February allotments. In reply, the Finanzamt ruled that the permit, dated February 6, 1934 although orally issued on January 29, became effective in February. However, since issued in January, it was valid only through March. By this convoluted reasoning, H. Kempner received only two monthly payments from a three month permit.\textsuperscript{25}

About this same time, Kuchen finally settled. The Finanzamt ruled that the 31,323.26 Sperrmarks, although transferable at the rate of 10,000 per month, would not be released until after the last Kolbermoor transfer, scheduled for January, 1935.\textsuperscript{26}

Zulow cabled Dan on February 10, 1934 that the first installment had been sent, but could not give the exact rate of exchange. He also noted the Finanzamt's continued willingness to liquidate the Sperrmark account for the payment of goods bought in Germany and exported to America. Zulow suggested that Dan,

\ldots get in touch with some American firms who are interested in imports from Germany or you yourselves may be able to
make use of German goods or machinery for your other enterprises.\textsuperscript{27}

Zulow also invited Dan to invest in A. Zulow and Company for the statutory five years, a course of action that would protect H. Kempner from the Sperrmark discount. While Finanzamt approval was required, it customarily was given routinely in similar requests.\textsuperscript{28}

Dan prepared to sell the Sperrmarks which had been released while simultaneously exploring Zulow's suggestions. Despite having a mere 10,000 Sperrmarks in hand and the certainty of receiving only 10,000 more, Dan offered 110,000 Sperrmarks to the Guaranty Trust Company of New York at 39.00 cents each. Terms were to be "partial deliveries at our option within three months."\textsuperscript{29} Guaranty offered 38.75 cents per mark and agreed to Dan's three month delay.\textsuperscript{30} Ike drafted the final terms which Guaranty Trust accepted:

\begin{quote}
\ldsquote{\ldots we have sold you German Reichsmarks 110,000, delivery at our option by partial deliveries within three months, at a rate of 38.75 cents per mark.\textsuperscript{31}}
\end{quote}

Dan cabled Zulow that he had sold the 110,000 marks, confidently noting that he was "anticipating facilities for having contracts extended for portion not delivered."\textsuperscript{32}

Ike explained the plan more fully to Zulow:

\begin{quote}
\ldsquote{\ldots [when] we attempted to sell the RM\$110,000, that are to be remitted in}
eleven monthly installments, we encountered the difficulty that no one felt willing to buy beyond a three months limit. But we finally succeeded in selling to the Guaranty Trust Company these RM110,000, delivery at our option within three months. We felt in this way we could protect ourselves against any radical advance of the dollar, because if the contract could not then be extended we could buy in the marks at the decline. On the other hand, we felt that if the dollar should further decline and the mark value increase, that the bank would be only too willing to extend the time for delivery for at least another three months. 33

Ike and Dan gambled on two contingencies: that the Finanzamt would continue to issue export permits and that Guaranty Trust would extend the contract life. 34

Neither gamble worked. In March, 1934, the Finanzamt released only 4,000 marks and, in April, refused to issue another export permit. In May, Ike received a gentle reminder from Guaranty Trust that,

With reference to the . . .[sale of 110,000 marks], up to the present writing we have not received your confirmations relative thereto. Under the circumstances, in order that we may complete our files in the matter, you 35

When Ike asked for a time extension, the bank could not grant his request. It had already resold the marks, with delivery scheduled for August. Between February and August,
1934, Ike and Dan accumulated enough marks from money futures transactions to satisfy their obligation. Finally, on August 11, 1934, they transmitted 110,000 marks to Guaranty Trust, but in doing so, absorbed an additional $16,000 loss.\textsuperscript{36}

With direct transfer of marks into dollars no longer possible, Dan began to consider alternative methods to remove assets from Germany. He explored the first of several possible avenues for exporting merchandise. In May, 1934, he contacted the Schenley Corporation, a New York liquor importing company, to ascertain their willingness to purchase wines in Lighter-Nussbaum's name. Dan offered 3-5\% over the existing mark discount rate. Although Schenley was initially interested, the firm ultimately rejected Dan's offer after discovering that sperrmarks could not be used to purchase wines for exportation.\textsuperscript{37}

In June, 1934, Zulow reported a victory. The Finanzamt would release sperrmarks for three specific purposes: purchasing German wines for exportation to America; paying freight charges and brokers commissions on cotton consigned to the Port of Bremen if carried on German bottoms; and investing in A. Zulow and Company for a period of five years or longer.\textsuperscript{38}
Ike, Dan and Harris discussed Zulow's suggestions. They dismissed out-of-hand the notion of shipping cotton on German steamers. They agreed that investing in Zulow's firm was probably the safest, most profitable course. If all or part of the Sperrmarks could be used to purchase goods for export, they were willing to consider that, as well. However, the men all knew that, regardless of their own preferences, the Finanzamt, which issued use permits, had the final say.39

Throughout the remainder of 1934, the Kempners, their attorneys, and their agents all sought viable ways to convert the Sperrmarks into usable assets. Zulow, Lifschutz and Loening continued to negotiate with the Finanzamt for export permits. A little at a time, they were successful.

In November, 1934, Zulow announced a breakthrough. The Finanzamt agreed to transfer 70,000 Sperrmarks, as free marks, to Guaranty Trust's account with the Reichskreditgesellschaft (Empire Credit Association) in Berlin. Guaranty Trust intended to make the free marks, which circulated freely and at face value, available to their American customers at the current dollar to mark exchange ratio for payment of their obligations to German firms. As the marks sold, Guaranty planned to credit American dollars to H. Kempner's account.40
The exchange, so simple and promising on its face, became enormously complicated as the Finanzamt imposed increasingly restrictive conditions. The permit specified that,

...payment out of the account...can only be made for goods produced in Germany. For export goods which contain imported raw materials, these raw materials must not contain more than 20% the value of the goods. You are hereby ordered to make a thorough check of each instance when payment requests are made...to ascertain definitely that the above conditions have been complied with.41

Even with the restrictions, Guaranty Trust experienced little difficulty in selling the marks for H. Kempner.

In December, 1934, Dan instructed Zulow to use "about 5000 marks or approximately $2,000" for wine purchases. The consignment was to be one-fourth Rhine wines, "especially Liebfraumilch Auslese 1931...In other words, the sweet or less dry of the Rhine Wines." Another one-fourth was to be a combination of "Cognac, Port, Sherry and various liqueurs." The remaining half was to be "equally divided among good French Bordeaux, Burgundie, and Champagnes."42

In October, 1935, H. Kempner attempted to invest 40,000 Sperrmarks in A. Zulow and Company. The Finanzamt refused to give its approval. From this point until 1940, H. Kempner had almost no success, despite repeated attempts,
in utilizing its blocked assets. Virtually the only permits issued by the Finanzamt were for payment of attorney fees to Hans Loening.

With war looming ever more surely as the decade of the 1930s passed, Dan increasingly tried to avoid or evade German currency regulations. He concocted a money laundering scheme to convert Sperrmarks into blocked Italian lire, for investment in Ghedini and Company, a Milan cotton agency. In Italy, Ghedini would exchange the blocked lire for Vatican dollars, a currency which circulated freely and which could be liquidated in the New York money markets. Dan abandoned the idea only after all his lawyers--Lifschutz, Loening and Neethe--refused to have anything to do with such a patently illegal plan.43

In January, 1939, Dan considered joining a Dutch consortium headed by Erich Warburg and Company of Amsterdam to purchase three electric light and gas plants in Ankara and Adana, Turkey. The current owners--Elektrizitaets-Lieterungs-Gesellschaft Berlin and Didier-werke A. G. Berlin--had received permission from the Finanzamt to sell their holdings for 24,000,000 Sperrmarks. Dan had two important problems: (1) Could Sperrmarks be transferred into Turkey at better than the official rates? and (2) How high
were the political risks? Warburg candidly assessed the difficulties for Dan:

It is all very well to get money out of Germany, but Turkey is not a place for Sunday picnics, either and as you know they have very strong foreign exchange restrictions; an ultra-militaristic government which has treated the rights of foreigners not exactly with kid gloves. 44

In April, Dan finally decided against the investment because the exchange rate was too low and more attractive opportunities existed in Germany and elsewhere. 46 Warburg tried to change Dan's mind:

[I] would not recommend any actions resulting in long term involvement in Germany. Conditions, even if the country should not get into a war, would remain (to put it mildly) extremely unsettled. . . . I, however, would get out at 10% and forget about the rest—painful as it may be. 47

Dan offered to lend 1,000,000 Sperrmarks at 3.5% annual interest, payable in sterling, to Otto Hartenstein, a Nazi and former head of the Divisenstelle, who owned a large chemical plant. Although the terms were good and the investment seemed safe enough, Hartenstein reneged at the last moment. Perhaps he realized the political impropriety of borrowing money from, and becoming business partners with, an American Jewish firm. Simultaneously, the Divisenstelle refused to issue the necessary permit. 48
Dan next attempted to invest 500,000 Sperrmarks in Revisa, an Dutch investment trust company formed by two expatriate Germans: Walter Loeb, formerly president of the Deutschebank branch at Thuringia; and Bruno Asch, previously municipal treasurer for the cities of Frankfort on Main and Berlin. After observing that Revisa's plans called for investment in Albania, "whose political entity has been entirely destroyed in the last few days," Dan became thoroughly skeptical about the trust's chances for financial success. He finally decided against the investment. 49

Dan's final plan, in May, 1939, was to sell the Sperrmarks to Montgomery Ward and Company at fourteen to sixteen cents each. Wards, interested but aware of European political instability, countered with an offer of its own: H. Kempner would buy specific merchandise in Germany for Wards. When the goods arrived in the United States, Wards would repurchase them. Dan quickly refused Wards' plan because, according to Finanzamt regulations, goods for export could only be purchased with a combination of currency: 75% in U.S. dollars and 25% Sperrmarks. Neither Ike nor Dan wanted to make such a substantial investment in German goods. 50

Before Ike or Dan could devise any other strategy, Germany invaded Poland on September 1, 1939 and Hitler's
Third Reich froze all foreign accounts. On May 9th and 10th, 1940, Hitler's armies, implementing their "Yellow Plan" to conquer western Europe, invaded Belgium, Holland and France. The French courts promptly suspended civil cases for the war's duration.

Ike and Dan Kempner, barred during the war from recovering their European assets, turned to a potential domestic source for restitution: the German Special Deposit Account, which still contained assets seized from German nationals during World War I.
ENDNOTES

1. Alexander Lifschutz, Case Summaries: Hornschuch; Bayerlein; Kulmbacher; Kuchen; Forchheim; Leuze; Bourcart; Jacquel; Kiener; and Marchal. In late 1945, Lifschutz drafted lengthy summaries of all the cases and sent them to Dan Kempner.


3. Lifschutz, Case Summary: Kulmbacher, 1945; H. Kempner, Interoffice memoranda, December 29, 1936 and June 30, 1927.


7. Ibid.

8. Ibid.

10. United States Department of Commerce, Bureau of Foreign and Domestic Commerce, "Foreign Financial News," Special Circular No. 395, December 15, 1933. The thirty-five countries listed in the circular were: Austria; Belgium; Bulgaria; Canada; Czechoslovakia; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Irish Free State; Italy; Latvia; Lithuania; Mauritius; Netherlands; Norway; Persia; Poland; Portugal; Portuguese East Africa; Portuguese Guinea; Portuguese West Africa; Rumania; Spain; Sweden; Switzerland; Turkey; Union of South Africa; United Kingdom; Yugoslavia; and Japan.

11. Ibid, pp. 7-10. According to the "Special Circular," the six types of marks and their usages were:
(1) Altguthabeng or Old Credit Marks--Accounts or balances acquired in Germany before July 15, 1931 or credits belonging to persons who left Germany after August 3, 1931 were blocked under this title.
(2) Effektenperrmark or Blocked Marks Resulting from the Sale of Securities--In the first period of the exchange control, all foreigners could sell their German securities without restriction and freely dispose of the proceeds. Since November 11, 1931, the sale of securities for foreign account could only be made by depositing the proceeds in a special Effektenperrmarkkonto or blocked-mark-from-sale-of-securities account.
(3) Notensperrmark of Blocked Mark Currency Accounts--Mark notes deposited by foreigners were credited to a free account up to the beginning of 1932. After February 19, 1932, they were credited only to a blocked mark currency account.
(4) Kreditsperrmark or Blocked Credit Mark--These were mainly funds resulting from the repayment of credits made after August 3, 1931, that did not fall under the "Stand-still" agreement. Also funds resulting from the sale of real estate and other property since February 19, 1932, that were not the result of the sale of securities. Elsewhere in the circular, the "Stand-Still" agreement was defined as an arrangement made in February, 1933, by which Germany's principal foreign bankers, to maintain the Reichsbank, extended the country's outstanding short-term credits for six months. The agreement, renewed in August, 1933 for an additional six months, also permitted Germany, as resources became available, to resume payments.
(5) Registermark or Registered Marks—As a result of lengthy negotiations foreign creditors were given the right in the "Stand-still" agreement, under certain restrictions, to secure the repayment of credits and to deposit the funds without interest in the Reichsbank.

(6) Konversionsperrmark or Blocked Conversion Marks—This was the newest type of blocked marks resulting from the decision that, after July 1, 1933, interest due to foreigner on some German securities would no longer be paid in full foreign exchange, but would be paid 50% in foreign exchange and 50% in marks in the form of scrip. The scrip could be sold through the German Conversion Office and transformed into foreign exchange at a discount of 50%. The end result was that foreign bondholder received, in foreign exchange, only 75% of the amount called for.

Of the six types of blocked marks, only four actively circulated: Effektenperrmark, Kreditsperrmark, Registermark, and Konversionsperrmark. The 1933 discount rate for each active category was:

- Registermark, 20-24%
- Kreditsperrmark, 22-24%
- Effektenperrmark, 40-42%
- Konversionsperrmark, 50%.


15. Ibid., p. 9.


17. Harris Kempner to Isaac H. Kempner, May 18, 1934. The Kempners were not alone in their fears. As early as 1933, and certainly earlier than any European statesman...
of comparable rank, Franklin Roosevelt became convinced that Hitler meant war. Robert Dallek, Franklin D.
Roosevelt and American Foreign Policy, 1932–1945 (New

18. Alexander Lifschutz to Secretary of Commerce for
Germany, Berlin, Germany, December 23, 1933.


22. Daniel W. Kempner to Senator Tom Connally, January 16,
1934.

23. Decision #6057A, January 29, 1934, by President
Landwehr, Finanzamt, dated February 6, 1934.

24. Alexander Lifschutz to Daniel W. Kempner, February 8,
1934.


28. Ibid.

29. Daniel W. Kempner to Guaranty Trust Company, New York,
February 14, 1934.

30. Guaranty Trust Company to Daniel W. Kempner, February
14, 1934.

31. Isaac H. Kempner to Guaranty Trust Company, February
14, 1934.

32. Daniel W. Kempner to Adolph Zulow, February 18, 1934.

33. Isaac H. Kempner to Adolph Zulow, February 26, 1934.

34. Ibid.


38. Adolph Zulow to H. Kempner, June 11, 1934.


40. Hans Loening to H. Kempner, November 11, 1934.

41. Reichs Credit Corporation to Hans Loening, November 24, 1934.

42. Daniel W. Kempner to Adolph Zulow, December 18, 1934.

43. Daniel W. Kempner to Alexander Lifschutz, November 28, 1937.

44. Erich Warburg to Daniel W. Kempner, January 16, 1939; Daniel W. Kempner to Adolph Zulow, March 23, 1939.

45. Erich Warburg to Daniel W. Kempner, January 16, 1939.

46. Daniel W. Kempner to Alexander Lifschutz, April 14, 1939.

47. Erich Warburg to Daniel W. Kempner, May 11, 1939.

48. Daniel W. Kempner to Erich Heller, April 10, 1939; Adolph Zulow to Daniel W. Kempner, April 21, 1939.

49. Alexander Lifschutz to Daniel W. Kempner, March 29, 1939 and May 4, 1939; Daniel W. Kempner to Alexander Lifschutz, April 12, 1939 and May 12, 1939.

50. Isaac H. Kempner to Daniel W. Kempner, May 31, 1939; Adolph Zulow to Daniel W. Kempner, June 3, 1939.
CHAPTER VII

In 1941, Ike and Dan Kempner hired two politically astute lawyers, Carl M. J. von Zielinski and Harold G. Aron, both of whom had extensive experience in negotiating special claims which arose in World War I. Zielinski, according to a background survey furnished by G. S. Butler, Vice-President of the Bank of New York, had a satisfactory credit rating. Although unable to say how capable Zielinski was, Butler did state that he was a reliable, well-connected lawyer who had served as a U. S. Consular officer.\textsuperscript{1} Zielinski had made his reputation,

\textit{...acting as agent for German nationals here in the United States in negotiating special claims arising out of the last war and as agent for refugees from European countries.} \textsuperscript{2}

In 1938, Zielinski had steered a private bill through Congress which paid the heirs of F. Gary Griswold from the Alien Property Account, the same fund from which Ike and Dan hoped to recover their own losses. Zielinski refused to work entirely on a contingency basis since successful prosecution of H. Kempner's claim would entail too much labor and expense for such an arrangement to be feasible.
Instead, Zielinski wanted a flat retainer, to be specified later, plus a 13% contingency fee that also covered his expenses. 3

Aron used Zielinski's Griswold legislation as precedent when he guided a similar bill through Congress for Katherine Drier in July, 1940. According to Farris Campbell, Vice-President of National City Bank in New York, Aron was a competent, aggressive and self-confident attorney:

Our informants consider him an able lawyer, reliable and in good professional standing. They speak in particular of one case which they know he won and in which they say he did an excellent job. Frankly, they say they would not lend him any money but they would engage him as a lawyer, particularly in connection with any German claims. 4

Like Lifschutz, Aron was usually in financial straits. Although he accepted contract terms similar to Zielinski's, Aron often euphemistically asked Ike and Dan for a "refresher"—a fee advance. 5

The two lawyers agreed that H. Kempner's best chance for recovering its losses was a private bill. They set to work to achieve that goal in June, 1941. Aron wanted to meet privately in Washington, D. C. with Zielinski, Dan and

...some influential member of the southern Senators on the Foreign Relations Committee or the Finance Committee. 6
Dan arranged the meeting for July 20 or 21, 1941. However, he denied having any clout:

I personally have but slight acquaintance with any member of the committees except Senator Connally of Texas, who is a member of the Finance Committee. 7

Dan's demurrer was an unduly modest assertion. During the 1930s and 1940s, each Texas governor received the first 100 sets of annual license plates. Always keeping plate number "1" for himself, he distributed the other low numbered sets to his political confidants and cronies. Dan was among those fortunates who received a set of prestige plates yearly. The simple number "16" on the front and rear bumpers of his Cadillac indicated just how powerful Dan really was. 8

Although he did not maintain a high public profile, Dan, as well as the rest of his family, was well known to, and on a first name basis with, most important Texas and regional politicians. H. Kempner's considerable property holdings, which extended the length and breadth of Texas, made the firm a quietly potent force in local, state and national elections. Through legitimate campaign contributions, "favors" as Lyndon B. Johnson called them, H. Kempner hoped to assure the election of men sympathetic to the firm. Further, as a reward for strongly supporting H.
Kempner's interests, prominent office-holders often received both letters of thanks and additional "favors."9

This discreet exercise of power also had a social aspect. For a combination of personal, business and political reasons, the Kempners occasionally entertained selected friends and associates with lavish formal galas or extravagant Texas-style barbecues. Presence on, or omission from, the guest list clearly designated an individual as probable friend or presumed foe.10

Zielinski, who knew Dan's position and power, pressed him for action, reiterating the importance of direct personal contact with congressmen. To buttress his request, Zielinski described a conversation reported by Aron:

> From the talk he had with your brother [Ike] in New York, . . . [Aron] gained the impression that you have many friends in congress and wants to take every advantage of the situation.11

When Dan again denied having any political influence,12 Aron alternatively suggested that,

> . . . it may be better to have your brother [Ike] in Washington too as he is the one who seems to have the political connections.13

Responding to this suggestion, Ike assumed Dan's low-key stance and firmly asserted:

> If you . . . [have] gathered any impression that I am the "one (rather than any other member of our family) who
seems to have the political friends," I must have been guilty of some boasting which I cannot possibly recall. . . .
Above all, the friendship is probably based upon the fact that we have never asked political favors of them or asked any personal action on their part that they could not conscientiously or consistently undertaken [sic].

Despite their obvious reluctance to ask for favors, Ike and Dan finally agreed to exploit personal friendships and business relationships.

Aron devised a three-pronged attack. First, he had to replenish the nearly depleted accounts of the Alien Property Custodian. Then he had to marshall support from the U.S. Department of State. Finally, he proposed to introduce a private relief bill in Congress.

Aron devised an ingenious plan to refund the Alien Property Account. In addition to representing H. Kempner, he was also legal counsel for Germann and Company, a cigar manufacturer with offices in Hamburg, Germany and Manilla, The Philippines. During World War I, the United States seized Germann's Philippine cigar factory. In 1919, the Alien Property Custodian sold the factory at public auction for less than book value. Other questionable transactions involving additional Germann properties also existed. Altogether, mismanagement of Germann's assets by the Alien Property Custodian cost the business $971,640.03.
In presenting his case to U. S. Secretary of State Cordell Hull in 1941, Aron charged that

.. .an agency of the United States Government, acting under the authority of Section 12, Paragraph 4 of the Trading with the Enemy Act of 1917, under the obligation "to manage such property and to do any acts or things if and when necessary to prevent waste and protect such property," caused a part of the consideration.. .of the trust property to be paid to a third person.16

Aron was not the only one to criticize the Alien Property Custodian's stewardship of Germann's assets. As early as 1922, Judge Milton D. Purdy, a special assistant to the U. S. Attorney General, complained that,

.. .Germann & Co. is the only trust which arose in the Philippine Islands which in my judgment has been improperly administered.17

In 1926, Comptroller General J. Raymond McCarl characterized the Custodian's behavior in the matter as "criminal."18

Having laid this groundwork, Aron proceeded to his next points. (1) H. Kempner had valid claims against both the German government which wrongfully refused to release its assets and the German and Alsatian spinners who fraudulently pleaded the gambling defense. Further, H. Kempner's customary recourse--the German judicial system--was unavailable because of the war. (2) Germann and Company had
legitimate claims against the United States which, while custodian of its assets, failed to protect them. Further, Germann's customary recourse—the American judicial system—was barred by the Treaty of Versailles. Aron proposed that H. Kempner and Germann & Company reciprocally assign their claims. Then, each firm could seek restitution from its own government.19

Aron petitioned the State Department for an opinion about the propriety of his proposed funding and switching plans. In an answer dated November 28, 1941, Green H. Hackworth, Department Legal Advisor, avoided the substantive issues and ruled that the question was "not one falling within the jurisdiction of this department."20

On December 3, Dan complained angrily to Connally about Hackworth's evasive reply which "threw the case back to the Department of Justice on the question of the merits of the claim of Germann and Company."21 Four days later, Japanese fighter-bombers attacked Pearl Harbor and the United States joined the rest of the world in war.

Zielinski noted the war's importance to H. Kempner's claims:

It is a comment that since we started on this matter, war has been declared and this method of settlement may be the sole means whereby the Kempners can get any payment. . . . Since diplomatic relations with Germany have been severed
the State Department will perhaps not be so sensitive in its treatment of German affairs.\textsuperscript{22}

In late January, 1942, Connally introduced Aron to Robert McMillan, counsel and bill writer for the Senate Finance Committee. Aron gave him a proposed draft H. Kempner's relief bill:

The Secretary of the Treasury is authorized and directed to credit to the Trust of Germann and Company dollars and charge the same against the German Special Deposit Account created pursuant to the Settlement of War Claims Act, or against any other funds or property which now are in or may come into his possession or control, belonging directly or indirectly to the Government of Germany and to pay said amount to H. Kempner (Unincorporated) of Galveston, Texas, upon the execution and delivery by it of a complete assignment in due legal form to the Trust of Germann & Company of all claims and demands now belonging to the said H. Kempner (Unincorporated) against the German Government and nationals of the German Reich resulting from the sale of cotton by the said H. Kempner.\textsuperscript{23}

Accompanying the bill was a six page narrative account of the spinners' litigations which concluded with a prayer for relief in,

\[\ldots\text{the sum of } 1,886,676.02 \text{ out of the German Special Deposits in the Treasury of the United States (Alien Property Custodian Funds).}\]
Meanwhile, negotiations continued with the State Department to secure a more favorable opinion. On November 2, 1942, Secretary of State Cordell Hull issued a substantive response to Aron's novel proposal. In a sharply worded statement, Hull dismissed H. Kempner's petition as unsubstantiated and unsuitable:

Aside from the fact that the Department is not in possession of evidence establishing that either of the claims is a valid claim, it is not perceived on what justifiable basis this Government could divert funds in the manner contemplated by the proposed legislation. . . . The Department is not in a position to recommend the passage of the proposed legislation. 25

Aron asked Connally to intervene with the State Department because,

The letter of the Secretary fails to observe that none of us, at any time, proposed or suggested that any payment be made until both claims had been established by legal evidence, to the satisfaction of a designated legislative committee or other tribunal which would be named in the Bill. 26

Although Connally interceded, war related priorities deflected Congressional and State Department attention from H. Kempner's problems. Over the next year, Zielinski and Aron made so little progress on the bill that Dan became disappointed and disillusioned because it was "getting nowhere mighty fast." 27
Connally, "bothered by the extraordinary nature of the bill and the fact that he [was] Chairman of the Foreign Relations Committee,\textsuperscript{28} was reluctant to introduce Aron's bill on the Senate floor. Aron, then,

\[\ldots\] took the bull by the horns and told [Connally] that if he would introduce the bill, I would carry it the rest of the way— that all I wanted was a fair hearing. He remarked that \ldots\ he intended that we should have a hearing.\textsuperscript{29}

On May 19, 1944, Connally introduced the bill "by request,"\textsuperscript{30} the procedure for entering a bill into the legislative process without his personal support. The Senate Parliamentarian initially referred it for hearings to the Committee on Claims, chaired by Senator Allan Ellender of Louisiana.\textsuperscript{31} Unhappy with this assignment and knowing the significance of committee reports, Aron and Connally had the bill transferred to the Senate Finance Committee, chaired by Senator Walter F. George of Georgia.\textsuperscript{32}

The bill received no overt attention from the Finance Committee for nearly four months. However, revelations of behind-the-scenes activity abruptly surfaced in early fall. On September 14, 1944, Aron furiously wrote:

\begin{quote}
Again I am compelled to communicate with you by hand because of swift development after office hours which I have apprehended buy cannot isolate as to cause, unless it be some henchman of [former Secretary of State Sumner]\
\end{quote}
Welles still in the State Department who resents the fact that we caught his then chief in a prevarication. . . .
Yesterday afternoon Mrs. Carr [Connally's secretary] . . . called me in obvious distress to tell me the State Department had written The Committee on Finance condemning the bill severely and intimating that Senator Connally was much disturbed about it.

Mrs. Carr's "obvious distress" indicated that, although reluctant to introduce the bill, Connally was not opposed to it. However, his support was not wholehearted. As the Chairman of the Foreign Relations Committee, Connally was one of the Senate's most powerful men. Yet, he seemed impotent to influence another committee into action.

Finally, on December 1, 1944—far too late in that session for Congress to act on the bill—George appointed a sub-committee composed of Senators Thomas J. Walsh of Montana, Robert Byrd of Virgina and Robert LaFollette of Wisconsin. Before the sub-committee met, Congress adjourned and H. Kempner's bill died. 34

On February 1, 1945, Connally reintroduced H. Kempner's bill, this time without the notation, "by request." As before, the Parliamentarian referred it first to the Claims committee and finally to the Finance Committee. George, still chairman, appointed the same three member sub-committee 35 and requested official reports from the
Departments of State and Treasury. Both still opposed the bill, "though not belligerently."  

The sub-committee took no action on the bill for over a year, until May 16, 1946, when it reported the bill favorably to the full Finance Committee. With Connally's active support, the Finance Committee approved the bill on July 18. H. Kempner's relief bill finally passed the full Senate on July 29. It succeeded in the House of Representatives on August 1, 1946.

Congress then transmitted the bill to President Harry S. Truman. For the first time in his career as a senator, Connally wrote the president, asking him to sign a specific bill:

You will note that the bill calls for no appropriation of any kind and takes no American dollars out of our Treasury. In view of these facts, I trust you will find it possible to approve the bill. The Kempners are members of a prominent cotton firm of many years standing in my State.

However, the letter arrived after Truman had made his decision. On August 10, 1946, Connally wired Dan the devastating news: "President refused to sign your bill on recommendation of departments."  

The Houston Post reported Truman's veto message:

"There appears to be no connection," the president said, "between the claims of the H. Kempner Association and the claim
of Germann & Co. for damages allegedly suffered because of the acts of the Alien Property Custodian during World War I. . . . The President said under existing law the Kempner Trust Association "is ineligible as a claimant under the Trading With the Enemy Act since its claim arose subsequent to October 6, 1917." 41

Aron, outraged by the veto, questioned the propriety of Truman's action and wanted Dan's permission to test the question in court for constitutional and strategic reasons. According to Aron,

. . . under repeated decisions of the United States Supreme Court, the Congress has the sole and untrammeled right to do with Enemy Property as it sees fit. . . . and the President would be usurping the power of the congress, if he attempted to overrule their action by veto or executive order. 42

Further, the mere filing of such a suit might prod Congress into speedily re-enacting the relief bill 43 Dan, after consulting Neethne, decided against any further lawsuits. 44

Aron, still convinced that H. Kempner's claim was valid, suspected that Truman had been misled in his veto. He stated,

For the moment, suffice it to point out that the Acting Secretary of State [Dean Acheson] is, or was, and presumably will be again, a named member of the law firm, which represented, and still does, as far as I know the Standard Oil Company and the largest awardees of the Mixed Claims Commission. . . . with unpaid awards running into tens of millions of
dollars. The law firm of the Assistant Secretary of the Treasury, Mr. [O. Max] Gardner, represents the so-called sabotage Claimants who also have unpaid awards of tens of millions of dollars, including the Lehigh Valley Railroad, Bethlehem Steel and Canadian Car and Foundry, on whose behalf at the time of his appointment a few months ago, he was continuing in a prolonged effort to get the Congress to authorize the disposition of the eleven million dollar balance in the German Special Deposit Account to his clients and other awardees. 49

In January, 1947, Connally reintroduced the bill. Meanwhile, Dan had been searching for a way to approach Truman personally, if the bill passed Congress again. He wrote Aron that,

...I believe that I have found the man who can properly do so [approach the President]. I have gone no further than to talk to him about the matter and to ask him whether he can be of help to us, and he intimated that he though he could when the Bill reaches the President's desk...no names [can] be mentioned or discussed until the time for action arrives. 46

While the bill languished and finally died in committee, Aron received confirmation that his suspicions about "skullduggery" in the government were correct. On July 6, 1947, Truman signed Public Law 375 which stripped the German Special Deposit Account bare. Attorneys for the claimants were: former Assistant Under-secretary of War John
J. McCloy; former General Counsel of the Treasury Randolph
Paul, and former Under-secretary of the Treasury O. Max
Gardner. Chief beneficiaries—known as the Association of
American Awardholders—were among the most prominent
industrial firms in the United States: Standard Oil of New
Jersey; Lehigh Valley Railroad; Guaranty Trust Company of
New York; International Harvester Company; Singer Sewing
Machine Company; United Shoe Machinery Corporation; Western
Electric Corporation; and Chase National Bank. However,
Aron overlooked a critical difference between H. Kempner and
the Association. While H. Kempner's losses had never been
fully adjudicated or validated, Association rights had been
approved by the Mixed Claims Commission. 47

On July 3, 1948, Truman signed Public Law 896 to create
a fund composed exclusively of the proceeds from enemy
property seized during World War II. Title to the property,
valued at more than half a billion dollars, vested
indefeasibly in the Government of the United States. The
fund's purpose was to restitute World War II damage
claims. 48

With the creation of this enormous new account, H.
Kempner again hoped for restitution. On February 25, 1949,
Tom Connally, for the fourth time, introduced private
legislation on H. Kempner's behalf. Routed through the
Senate Judiciary Committee, chaired by Pat McCarran of Nevada, the bill slowly moved through legislative channels. McCarran requested an advisory opinion from the Attorney General. 49

Assistant Attorney General Peyton Ford, after determining that H. Kempner's claims did not meet the criteria for participation in the new fund, rendered an incisive and highly unfavorable decision:

Enactment. ..would serve to accord this claim unjustified priority over claims for war damage arising from World War II. ..Any payment. ..for losses arising in peacetime trading in a foreign country would constitute a departure from the existing policy of the Government. ..The bill fails to empower the Court of Claims to entertain any evidence of any compensation received by claimant on account of the losses incurred and it does not authorize the Court to entertain any evidence concerning the existence of legal defenses which might excuse liability for the losses.

Walter F. Woodul, a fellow Texan currently serving as a Presidential advisor, noted the similarities between Ford's opinion and previous attorney generals' reports. He feared another presidential veto. 51 After receiving the report, McCarran's full Judiciary Committee tabled the bill indefinitely. 52
Bone tired and out of patience after nearly thirty years of constant aggravation, Dan's inclination was to drop the case. However, Dan considered Aron's predicament. The attorney had worked diligently in H. Kempner's behalf for over fifteen years. Yet, unless H. Kempner recovered some assets, Aron was not entitled to his contingency fee. For this reason, Dan decided to press forward.53

Aron was aware of Dan's growing impatience. When Senator Garrett Lee Withers of Kentucky, chairman of the Judiciary sub-committee handling the bill, wanted to follow the full committee's lead and table it indefinitely, Aron caustically exclaimed:

...the Kempner firm is a century old and they have waited a generation for justice!54

Aron tried to shame the sub-committee into action by asserting that its,

...failure to reach a timely conclusion indicated a lack of conviction as to the merits of the bill and the integrity of its sponsors.55

Aron's outbursts did not move Withers who doubted that Congress would enact the bill over objections from the Attorney General's Department.56

For the next several years, Dan, Ike, and Aron marshalled all their resources. They intensified their
efforts after Dwight Eisenhower's election as president, hoping that the new Republican administration would take a fresh look at the bill's merits. Ike and Dan asked friends, relatives, and business associates throughout the United States to plead H. Kempner's cause with local congressional delegations. They corresponded regularly with all Texas congressmen. They also constantly criticized Texas Ninth District Congressman Clark W. Thompson, from Galveston, for inaction and demanded that he give the matter his "full attention." They badgered Texas Senator Lyndon B. Johnson unmercifully. Johnson became so frustrated with Aron's interminable advice that he fired a heated volley to Dan:

I think one of the problems you are always going to have...is Mr. Aron. A good example of it is that he knows more about how I ought to run my office than I do. If the effect he has on the other Senators is the same as he has on me, then I don't think you are going to get a very sympathetic hearing.

Finally, on February 13, 1953, the House passed the Kempner bill. However, the Senate version remained bottled in the Judiciary Committee, where it had been stalled since 1950. However, the Judiciary Committee soon learned that Eisenhower's attorney general, Herbert Brownell, was no less hostile to the bill than his Democratic predecessors.
Brownell's report, dated July 1, 1953, was nearly identical to all previous executive branch reports in its criticisms of the Kempner relief bill. Brownell threatened to recommend a veto if the bill should reach the president's desk. Aron, who believed that "this danger can be overcome," nevertheless knew that "the entire situation now merits close attention." 59

Johnson, McCarran, and several other senators worked to get the bill onto the Senate floor. Finally, in October, 1954, the bill passed first the Senate and then the House. However, when it reached the president's desk on October 13, 1954, Eisenhower—like Truman and for the same reasons—vetoed the bill. 60

The long ordeal was finally over. Every avenue had been pursued and exhausted: negotiation; litigation; and legislation presented to presidents from both political parties. There were some subsequent, inconsequential maneuvers, but Dan's heart was no longer in the work. Two years later, he died suddenly of a heart attack while vacationing in Paris. The twisted threads of the cotton spinners' litigations had occupied thirty-five of Dan's seventy-nine years. If Dan thought of it at all, perhaps at some point he contemplated the sublime irony, in this course of events which cost many lives and ruined even more
reputations, of exchanging Sperrmarks in 1939 for a supply of marble grave markers.
ENDNOTES

1. G. S. Butler, Vice-President, Bank of New York, 48 Wall Street, New York to Daniel W. Kempner, March 28, 1941; Farris Campbell to Daniel W. Kempner, March 28, 1941.

2. Ibid.


4. Farris Campbell, Vice-President, National City Bank of New York to Daniel W. Kempner, April 21, 1941.

5. Carl M. J. von Zielinski to Daniel W. Kempner, March 24, 1941.

6. Carl M. J. von Zielinski to Daniel W. Kempner, June 6, 1941. The letter was marked "Confidential."


10. Ibid., pp. 1545-1546.


16. Ibid.

17. Ibid.

18. Ibid.

19. Ibid.


25. Cordell Hull, Secretary of State, to Tom Connally, November 2, 1942.


27. Daniel W. Kempner to Harold G. Aron, April 5, 1943, August 26, 1943.


29. Ibid.

30. Harold G. Aron to Daniel W. Kempner, May 18, 1944; see also Appendix B for text of Senate Bill 1943.


33. Harold G. Aron to Daniel W. Kempner, September 14, 1944.

34. Harold G. Aron to Daniel W. Kempner, November 14, 1944.


40. Tom Connally to Daniel W. Kempner, August 10, 1946.

41. Houston Post, August 11, 1946. Presidential Vetoes, 1789-1976, J. S. Kimmitt, Secretary of the Senate and Roger K. Haley, Librarian of the Senate, Compilers (Washington: U.S. Government Printing Office, 1978), indicated that Truman made the third most prolific use of the presidential veto. Franklin Roosevelt, with 635, was first; Grover Cleveland, with 414, second. During his nearly eight years in office, Truman vetoed 250 bills, of which 142 (well over half), concerned private legislation such as the Kempner Relief Bill.

42. Cummings vs. Deutschebank 300 US 115 (1937); Harold G. Aron to Daniel W. Kempner, August 24, 1946.


52. Pat McCarran to Tom Connally, August 9, 1949.


55. Ibid.


57. Daniel W. Kempner to Clark W. Thompson, February 27, 1952.

58. Lyndon B. Johnson to Daniel W. Kempner, March 26, 1954. Of the many letters from Johnson in the Kempner papers, only this one bears the handwritten notation "Confidential" at the top. It is the only letter which shows emotion or which moves out of the basic pattern for congressional correspondence to a constituent:

Dear Constituent,

I have received your request and am acting on it. You should soon have a final answer. If there is anything else this office can do, please do not hesitate to ask.

Sincerely,

Your congressman

cf. Robert A. Caro, The Years of Lyndon Johnson: The Path to Power (New York: Alfred A. Knopf, 1983), pp. xiii-xxiii noted Johnson's "extraordinary preoccupation with, and talent for, secrecy" (p. xviii). Johnson, according to Caro, concealed much of his own life and
frequently annotated even "innocuous personal letters" (p.xviii) with "Burn this" or similar phrases.


60. Harold G. Aron to Daniel W. Kempner, October 14, 1954. Eisenhower, like Truman, exercised the veto power freely. Ranked as the fourth most prolific veto user among the presidents, Eisenhower disapproved 181 bills during his two terms. Ninety-seven, or almost 55% were on private legislation.
EPILOGUE

Three important questions remain: (1) What effect did the cotton spinners' losses have on Galveston and the Texas Gulf Coast regional economy? (2) What effect did the troublesome course of events have on the family and business known as H. Kempner? (3) What implications does this research have for future Kempner studies?

Effect on Galveston and the Texas Gulf Coast:

Kempner losses in the spinners' litigations, although monetarily significant, were probably less important to Galveston and the Texas Gulf Coast than were other twentieth century phenomena. Galveston's decline as a regional financial and commercial center probably resulted more from two great hurricanes, one in 1900 and the other in 1961, which destroyed large sections of the city, encouraged existing businesses to relocate elsewhere, and discouraged the influx of new business; the inability of local elites to agree on what course the city should pursue into the future; Houston's emergence as Texas's premier port city and the Gulf Coast's regional center; cheaper, more convenient
accessibility to the emerging Oriental spinning industry through such west coast ports as San Francisco and San Diego; and the virtual obsolescence of traditional compress and warehouse facilities after the invention of portable compresses and the innovation of containerized shipping.¹

**Effect on H. Kempner:**

Through mathematics, it is possible to deduce that the spinners' litigations required an inordinate amount of daily attention. Calculating the number of pages per storage box of raw data at the Rosenberg Library and then multiplying by the number of boxes produced the following conservative estimate: during the thirty seven years (9,260 working days) of controversy, the Kempners and their associates generated over 100,000 pages of materials, most of which were single sheet letters. Impressionistically, about half the correspondence was incoming to H. Kempner; the remainder outgoing.

By this calculation, the Kempners, on the average, received five pages per day and dispatched about same number. The incoming mail had to be read, studied, and assimilated. Then, much had to be answered. By any standard, this is extraordinary attention to a single topic, not only by the Kempner men, but by their associates and secretaries as well.
Since "Twisted Threads" is the first extensive research on the Kempner family, any estimate of the affect this time drain had on the general course of H. Kempner is purely speculative.

Further, although there are some fascinating hints of internal stress, the correspondence, because intended to represent H. Kempner's corporate viewpoint and not the opinions of any individual members of the firm, are generally devoid of management process data. The only substantial, and relatively rare, indications of the internal decision-making process were in correspondence between Ike and Dan when either or both were away from Galveston.

**Implications for future research:**

Interesting points for future consideration exist and are presented with the caveat that they may or may not prove valid after intensive study:

1. Although Ike initiated the spinners' contracts, Dan was the family's "front man" throughout the controversies. Dan also ran the Sugarland Industries which experienced substantial financial difficulties due to credit overextension during this same time. By comparing Sugarland's experience with the spinners' litigations, it may be possible to define contrasting patterns of business
response to adverse circumstances, with the differentiating criterion being successful or unsuccessful resolution. Because the spinners' litigations were apparently the Kempners' most notable failure, the actions exhibited by them during the course were probably the firm's most extreme behavior patterns.

(2) Dan's relative position within the family and business, because of the Sugarland losses and the spinners' litigations, may prove an interesting research point. Within H. Kempner, Dan was the management individual with apparently ultimate responsibility for both the family's great twentieth century crises. Therefore, the family's responses to him, if any, may illuminate the process by which a family business excludes or removes a member from authority for the apparent inability to achieve corporate goals.

(3) Finally, the entire history of H. Kempner, as both a family and business since 1854, deserves thorough research and evaluation. An integral part of Texas, the Gulf Coast, and occasionally of national history, the family is a truly remarkably entity.
ENDNOTES

APPENDIX A

SAMPLE CONVERSION CONTRACT
OUR CONTRACT 

Against your order given to our Mr. Waldemar Hapke, we beg to confirm in detail the following transaction effected:--

To have bought/sold for your account, under the rules of the New York Cotton Exchange, on the date indicated below, the following:

The conditions of this contract are that the total quantity of futures which we have bought/sold for your account is done by you for the purpose of protecting you in the purchase of cotton, or cotton yarns and goods that you may have on hand, and we understand that you contemplate to buy the actual cotton from us and apply it against the sales of futures; in other words, that you will buy from us a like number of bales of actual cotton,—the price, quantity, quality, shipment and other necessary conditions for the actual cotton to be agreed on later,—and the purchase of the actual cotton is to be done on the basis of our special offers to Mr. Waldemar Hapke for the qualities, quantities, deliveries and prices agreed on between your good selves and us.

It is understood that we have bought/sold the above Futures for your account, and shall not call you for any margins to protect any advance in the market until you have arranged to take the Actual Cotton, but you are to buy Actual Cotton from us or liquidate the Futures not later, in any event, than twelve months from this date. Nor in any event, are we to be called for any margin should the market decline.

Should we, on any day, or days, be called on for margins, and have to deposit such margins with our futures brokers, against an advance from the above prices, it is understood and agreed that we are to charge you interest on such margins paid out for your account at the prevailing rate of interest, which we have to pay.
It is further agreed that if you do not buy the Actual cotton from us to liquidate the contracts, or if the sales contracts are finally liquidated by purchases in the futures market prior to your buying from us an equal number of bales of Actual Cotton at our prevailing basis, you will pay us 50 points or $2.50 brokerage on the sale and purchase of futures, in addition to any costs of tendering, and of interest, storage, insurance, or other charges on cotton actually tendered.

It is understood between us that you have the privilege of finally liquidating these Futures at any time between the date of this contract and such liquidation is to be done only on cable instructions, which we may receive from you direct, or from you through Mr. Waldemar Hapke. You are to give us specific instructions as to whether you desire to liquidate these Futures at the opening, during the active market, or the closing quotations prevailing on the date specified for such liquidation. The instructions must be specific and you must allow ample time for your cable to reach us, and for us to do this liquidation in the proper manner. Any balance at your debit for such liquidation must be remitted by cable transfer for our account to our New York banker. On the other hand, should there be a balance remaining to your credit we will remit in any manner that you request, by cable transfer or to the credit of you Banker in New York, or any other legitimate manner of remitting.

It is understood between us that you have the right to transfer the sale of all Futures, or any part thereof, in lots of One Hundred (100) bales or multiples thereof, into later positions. Such transfers must be made before instructions in regard to such transfers, giving us ample time to meet your requests and act on your cable instructions. For such transfer you are to pay us a commission and brokerage of 25 points or One and 25/100 ($1.25) per bale.

For each and every transfer thus made you are to pay us the same charge for transfer, brokerage, and commission, as set forth foregoing. Any amount or difference due, either pro or con, to remain at you debit or credit until this transaction is finally consummated, wither by the liquidation of Futures or by the transferring of Futures into Actual Cotton on the basis of our special offers to Mr. Waldemar Hapke.
It is understood that the transfer of Futures into more distant positions can be done at your discretion and convenience, but for each transfer, as stated before, a transfer brokerage and commission of 25 points or One and 25/100 Dollars ($1.25) per bale must be paid to us on the final settlement of this contract.

Should you fail to liquidate the sales made under this contract, or fail to transfer the sales into later positions as herein stipulated, or should twelve months expire from the date of agreement, then and in any of these cases, the said contracts are to be closed out and you are to be responsible to us for all losses thereunder, together with a brokerage of Two and 50/100 Dollars ($2.50) per bale. In the event of profits, this $2.50 per bale brokerage is to be deducted from such profits.

It is understood that the above contract is made with you in the joint name of: Messrs. W. A. Lighter & Co., New Orleans, La., and/or H. Nussbaum, Galveston, Texas.

Kindly sign, accepting duplicate of this confirmation, returning same to us, and greatly oblige,

Very truly yours,
APPENDIX B

SENATE BILL 1943
IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, May 9), 1944

MR. CONNALLY (by request) introduced the following bill; which was read twice and referred to the Committee on Claims

A BILL

For the relief of the Trust Association of H. Kempner.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That jurisdiction is hereby conferred upon the Court of Claims (a) to hear the claims of the Trust Association of H. Kempner, of Galveston, Texas, against the Government of Germany and nations of Germany for reimbursement for losses alleged to have been sustained as a result of the sale of certain cotton by such trust association to certain mill in Germany during the years 1923 and 1924, and to determine the amounts of any such losses, and (b) to determine the total of the various amounts wrongfully paid out of the Trust of Germann and Company while its property was being administered by the Alien Property Custodian.

SEC. 2. The Secretary of the Treasury is authorized and directed (a) to credit the Trust of Germann and Company with an amount equal to any amounts found by the Court of Claims under clause (b) of the first section of this Act to have been wrongfully paid out of such trust, and to charge such sum against the German special-deposit account, created by section 4 of the Settlement of War Claims Act of 1928, or against any other funds or property of the Government of
Germany or of nations of Germany in the possession or under the control of the Government of the United States or which may hereafter come into the possession or under the control of the Government of the United States, and (b) to pay, to the Trust Association of H. Kempner, out of such special-deposit account or such other funds, the amount so created to the Trust of Germann and Company and so charged against such special-deposit account or such other funds, or so much thereof as does not exceed the amount of any losses found by the Court of Claims under clause (a) of the first section of this Act to have been sustained by the Trust Association of H. Kempner: Provided, That such payment shall not be made unless and until such trust association executes and delivers to the said Trust of Germann and Company a complete assignment of all claims and demands of the said Trust Association of H. Kempner against the Government of Germany and nationals of Germany arising out of the sale of such cotton during the years 1923 and 1924.