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INTERNATIONAL LAW - EFFECT OF RECOGNITION - STATUTE OF LIMITATIONS

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INTERNATIONAL LAW — EFFECT OF RECOGNITION — STATUTE OF LIMITATIONS — In 1917, the Provisional Government of Russia, which was recognized by the United States, had on deposit with defendant bank a large sum of money. During that year the Provisional Government was overthrown by the Soviet Government, and the bank decided to repudiate the debt, because deposits which the bank held in Russia had been confiscated to an amount exceeding that of the debt. The United States continued to recognize the Provisional Government as the de jure government of Russia until 1933. Before 1922, the bank communicated notice of the repudiation several times to Ambassador Bakhmeteff, representing the Provisional Government, and to Serge Ughet, the financial attaché. Upon recognition of the Soviet Government in 1933, the United States took an assignment of claims which might be found owing to that government,[1] and sued the bank on this debt. In *Guaranty Trust Company v. United States*,[2] the Supreme Court held that the notice to the representatives of the Provisional Government was an effective repudiation to the state of Russia, which was not invalidated by the subsequent recognition of another government as the ruler of that state; that the statute of limitations of New York[3] runs against a foreign sovereign, and had run in this case at the time of the assignments to the United States; and that the United States as assignee was barred from asserting the claim.

Recognition is held to validate retroactively all acts of the recognized government which it has done within its own territory.[4] However, it seems clear that acts, such as the repudiation in this case, which have affected legal relations with the state in question, and which took place outside that state, should not be rendered invalid.[5] For the in-

[1] Exchange of Communications between the President of the United States and the President of the All Union Central Executive Committee, 28 AM. J. INT. L. SUPP. 1 at 10 (1934).

[2] 304 U. S. 126, 58 S. Ct. 785 (1938).

[3] N. Y. Civil Practice Act, § 48: "The following actions must be commenced within six years after the cause of action has accrued: (1) An action upon a contract obligation or liability express or implied, except a judgment or sealed instrument."

[4] Luther v. Sagor, Aksionairmoye, etc. Co., [1921] 3 K. B. 532; Williams v. Bruffy, 96 U. S. 176 (1877) (dictum); Oetjen v. Central Leather Co., 246 U. S. 297, 38 S. Ct. 309 (1917). See HERVEY, THE LEGAL EFFECTS OF RECOGNITION IN INTERNATIONAL LAW, c. 5 (1928).

[5] Dictum to that effect, Russian Government v. Lehigh Valley R. R., (C. C. A.

dividual having such dealings is entitled to rely upon the former decision of the political department of his own government, as to what was the de jure government of the foreign state at that time. Any other rule would make it impossible for business dealings to be transacted in safety with foreign states.

It is a well-recognized rule that ordinarily the statute of limitations does not run against the local sovereign, the theory being that the public ought not to suffer for the negligence of its own servants in pressing claims.[6] But the basis of the rule fails when an attempt is made, as plaintiff did in this case, to apply it with respect to a foreign sovereign.[7] Nor does comity require such a rule. A foreign sovereign suing in local courts is held to submit itself to the local rules of law, and to waive its immunity.[8] Nor should the local sovereign, when suing as assignee,

2d, 1927) 21 F. (2d) 396 at 401, prohibition denied 265 U. S. 573, 44 S. Ct. 460 (1924), cert. den. 275 U. S. 571, 48 S. Ct. 159 (1927). Nor should a newly-recognized government's repudiation of such extraterritorial legal acts of the former government be given effect in the local courts, after recognition. Republic of Peru v. Peruvian Guano Co., 36 Ch. Div. 489 (1887). But the Soviet assignment to the United States in express terms left undisturbed acts done in good faith by American nationals with the ambassador and financial attaché here involved. State of Russia v. National City Bank, (C. C. A. 2d, 1934) 69 F. (2d) 44 at 48.

[6] The rule originated in the Crown's prerogative, but survived in the United States on the policy above stated. Davis v. Corona Coal Co., 265 U. S. 219, 44 S. Ct. 552 (1924). The policy was formulated by Justice Story in United States v. Hoar, 26 Fed. Cas. 329, No. 15,373 (1821).

[7] Apparently the only two cases directly in point are Royal Italian Government v. International Committee of Y. M. C. A., 273 N. Y. 468, 6 N. E. (2d) 407 (1936) (question first presented on petition for rehearing; statute applied without opinion); and Le Gouvernement espagnol c. veuve et héritiers d'Aguado, (Cour d'Appel, Paris, 1867) DALLOZ RECUEIL PÉRIODIQUE 1867.2.49, in which the statute was applied against Spain, but without consideration of the point by the court. On appeal to the Court of Cassation (JOURNAL DU PALAIS, 1869, p. 118) the plaintiff argued that the Spanish statute should be applied, but that court held that the plaintiff would not be heard to assert this contention for the first time before the highest court of appeal. But "prescription" in French law is thought to extinguish the right as well as the remedy, so the case may not be too significant for us. See 28 YALE L. J. 492 (1919). The Codes of Argentina and Paraguay expressly apply prescription against juridic persons, and juridic persons include foreign sovereigns. Civil Codes of Argentina and Paraguay, §§ 34, 3951 (cited in appellant's brief). The Civil Code of Spain also applies prescription against juridic persons (art. 1932), and juridic persons have been held to include foreign sovereigns. See LASALA-LLANAS, SISTEMA ESPANOL DE DERECHO CIVIL INTERNACIONAL E INTERREGIONAL 96 (1933). Similar provisions were adopted in the Pan-American Code of Private International Law (articles 31, 229, 231), which has been ratified by fourteen Latin-American nations. U. S. DEPT. OF STATE, TREATY INFORMATION CUMULATIVE INDEX 67 (1937) (indexing bulletins to June, 1935).

[8] See cases cited in the case under discussion, 304 U. S. 126 at 134, note 2; 19 AM. J. INT. L. 555 (1925); and Draft of Convention on Competence of Courts

have the benefit of the rule. When the remedy is barred as to the assignor, it is barred as to the assignee.[9] It is interesting to note, however, that the Supreme Court did not place its holding in this case upon the theory that the assignee stands in the assignor's shoes, as a recent comment would seem to indicate.[10] Rather, the Court takes pains to point out that it will assume, for the purposes of the decision, that although the remedy was barred as against Russia by the statute of limitations, it might not be barred as against the United States, because it might be considered that the right survives the loss of remedy. It then observes that even on such a supposition, the reason for the exemption of the local sovereign fails, when the latter is an assignee, because there is no longer a question of negligence on the part of its officers. If the United States takes a claim by assignment, there is no policy which requires it to be relieved of the assignor's negligence.

The United States argued that the statute of limitations ought not to run against the claim of the Soviet Government, as that government never had the power to sue until it was recognized. But the Court rightly pointed out that the claim was that of the *state* of Russia, and that there was at all times a recognized diplomatic representative of the Russian State to whom our courts were open for the purpose of prosecuting suit.[11] While the distinction between state and government might be thought "unrealistic," it is deeply rooted in international law, and serves the purpose here of enabling our nationals to deal in safety with whichever government is recognized by the political department of the United States.[12]

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in Regard to Foreign States, arts. 4, 14, published in 26 AM. J. INT. L. SUPP. 505, 646 (1932).

[9] United States v. Buford, 3 Pet. (28 U. S.) 11 at 30 (1830); United States v. Nashville, C. & St. L. Ry., 118 U. S. 120 at 125, 6 S. Ct. 1006 (1886); King v. Morrall, 6 Price 24, 146 Eng. Rep. 730 (1818). Apparently contra, but without consideration of the point: Administrator of Hungarian Property v. Finegold, 144 L. T. R. (K. B.) 670 (1931).

[10] 26 CAL. L. REV. 713, note 5 (1938).

[11] See Russian Government v. Lehigh Valley R. R., (D. C. N. Y. 1919) 293 F. 133 at 135, affd. (C. C. A. 2d, 1927) 21 F. (2d) 396, cert. den. 275 U. S. 571, 48 S. Ct. 159 (1927); State of Russia v. Bankers Trust Co., (D. C. N. Y. 1933) 4 F. Supp. 417 at 419, affd. (C. C. A. 2d, 1936) 83 F. (2d) 236, cert. den. 299 U. S. 563, 57 S. Ct. 25 (1936).

[12] For notes on the decision of this case in the Circuit Court of Appeals for the Second Circuit, 91 F. (2d) 898, which was reversed by the Supreme Court, see 47 YALE L. J. 132 (1937); 5 UNIV. CHI. L. REV. 313 (1938). For comment on the case in the Supreme Court, see 32 AM. J. INT. L. 542 (1938), by Professor Jessup.

The case was remanded for decision upon the issue of whether there had been unequivocal repudiation of the claim. The district and circuit courts found for the defendant as a matter of law. Mimeographed Opinion, Circuit Ct. of Appeal (Second Circuit); Swan, J.