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INTERNATIONAL LAW — RECOGNITION OF SOVIET RUSSIA — EXTRA-TERRITORIAL EFFECT OF DECREES OF CONFISCATION AND NATIONALIZATION — The Moscow Fire Insurance Company, the Northern Insurance Company of Moscow, and the First Russian Insurance Company were incorporated in Russia under the Czarist regime, and given authority to do business in New York. Deposits were made in New York for the benefit of policy holders and creditors in this country. Subsequent to the revolution in Russia and the Soviet decrees nationalizing all Russian corporations and confiscating without compensation such corporations' assets in Russia and abroad, these deposits were turned over to the New York State Insurance Commissioner for liquidation. Large sums remained after domestic claims were satisfied and the court ordered them turned over to the defendant institutions to be held in trust for whomsoever should be entitled thereto. The old boards of directors and shareholders in the old corporations instituted actions in the New York courts to have this money turned over to them. In November of 1933 the United States recognized the Soviet Government and an assignment was made by the Soviet Government to the United States Government of all claims which the Soviet Government had to property in the United States at that time. The United States Government brought suit in the Federal District Court, Eastern District of New York, claiming the funds in question on the ground that the Soviet decrees of confiscation gave the Soviet Government title to the funds and that the claims to them had been assigned to the United States Government. The district court decided against the claim of the United States on the ground that the Soviet decrees were against the public policy of the United States and were ineffective to pass title to this property, and also that the purported assignment did not include these funds. On certiorari to the United States Supreme Court, *held*, because the New York courts had retained control and jurisdiction over the funds and its proceedings were not terminated, and the suit of the United States was for the specific funds and not in personam merely, the United States must bring its suit in the New York courts. *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, 56 S. Ct. 343 (1936).

The problems which the New York courts will have to decide are (1) whether the confiscation decrees of the Soviet Government vested in that Government title to the property of the Russian corporations in this country, and (2) whether the nationalization decrees of the Soviet Government dissolved

those corporations, in contemplation of our courts, so as to deny the right of the directors and shareholders to sue. The laws of a foreign government can have no extraterritorial effect unless international comity so persuades the courts.¹ When the laws are against the public policy of the forum, international comity has no place.² If we assume that arbitrary confiscation of property without compensation is against the public policy of this country, it would seem that no title can be recognized in the Soviet Government by virtue of these decrees. It is clear that the recognition of the government issuing such decrees does not affect the situation.³ As to the second problem, is there a public policy against recognizing and enforcing decrees of a recognized foreign government dissolving corporations formed under the laws of a previous government of that country? ⁴ The corporations, in fact, no longer exist, and there can be no reason for insisting otherwise except to allow the old board of directors and the stockholders to obtain possession of remaining funds which rightfully belong to them.⁵ In so far as the Soviet decrees deny the right of such groups to the property in countries outside of the Soviet Union, such decrees should be ignored by our courts as against public policy. It would be consistent with the tenor of previous New York cases for the New York courts to deny the claim of the United States Government and to award the money to the members of the boards and to the shareholders.⁶

J.H.R.

¹ *Rose v. Himely*, 4 Cranch (8 U. S.) 241, 2 L. Ed. 608 (1808); *The Apollon*, 9 Wheat. (22 U. S.) 362, 6 L. Ed. 111 (1824); *Second Russian Ins. Co. v. Miller*, (C. C. A. 2nd, 1924) 297 F. 404, *affd.* 268 U. S. 552, 45 S. Ct. 593 (1924); *Bank of Augusta v. Earle*, 13 Pet. (38 U. S.) 519, 10 L. Ed. 274 (1839).

² *Bank of Augusta v. Earle*, 13 Pet. (38 U. S.) 519, 10 L. Ed. 274 (1839); *Vladikavkazsky Ry. v. New York Trust Co.*, 263 N. Y. 369, 189 N. E. 456, 91 A. L. R. 1426 at 1431 (1934).

³ *Baglin v. Cusenier Co.*, 221 U. S. 580, 31 S. Ct. 669 (1911); *Vladikavkazsky Ry. v. New York Trust Co.*, 263 N. Y. 369, 189 N. E. 456, 91 A. L. R. 1426 at 1431 (1934).

⁴ The English House of Lords has held, after British recognition of the U. S. S. R., that such corporations still existed in contemplation of English law, on the ground that there was no proof that the decrees of the Soviet Government had the effect even in Russia of wiping out these corporations. This appears to be a rather unrealistic approach. *Russian Commercial & Industrial Bank v. Comptoir d'Escompte de Mulhouse*, [1925] A. C. 112; *Banque Internationale de Commerce de Petrograd v. Goukassow*, [1925] A. C. 150. See Wohl, "The Nationalization of Joint Stock Banking Corporations in Soviet Russia and its Bearing on Their Legal Status Abroad," 75 UNIV. PA. L. REV. 385, 527, 622, (1927), for a discussion of how this problem has been handled in the European courts. The author argues that after the government of the forum has recognized the Soviet Government, the courts cannot say that the confiscation decrees are against their public policy, and believes that the best solution is to allow title in the Soviet Government to property of the old corporations outside of Russia at the time of the issuance of the decrees.

⁵ See 17 FLETCHER, CYCLOPEDIA CORPORATIONS § 8581 (1933).

⁶ Most of the cases on this problem have arisen in the New York courts and it has been generally held that these old corporations continue to exist, at least for the purpose of bringing suit to regain assets in New York. See *Petrogradsky M. K. Bank v. National City Bank*, 253 N. Y. 23, 170 N. E. 479 (1930); *James & Co. v. Second*

Russian Ins. Company, 239 N. Y. 248, 146 N. E. 369 (1925); Joint Stock Co. v. National City Bank, 240 N. Y. 368, 148 N. E. 552 (1925); First Russian Ins. Co. v. Beha, 240 N. Y. 601, 148 N. E. 722 (1925); Sliosberg v. New York Life Ins. Co., 244 N. Y. 482, 155 N. E. 749 (1927); James & Co. v. Rossia Ins. Co., 247 N. Y. 262, 160 N. E. 364 (1928); Russian Reinsurance Co. v. Stoddard, 240 N. Y. 149, 147 N. E. 703 (1925); People, by Beha, v. Russian Reinsurance Co., 255 N. Y. 415, 175 N. E. 114 (1931). No previous case in this country has decided whether the Soviet decrees of confiscation are effective to give the Soviet Government title to property in this country. Each time the Soviet Government has tried to assert such a claim in the courts, the courts have been closed to it on the ground that until it is recognized by the United States Government it cannot sue in our courts. Russian Socialist Federated Soviet Republic v. Cibrario, 235 N. Y. 255, 139 N. E. 259 (1923); The Penza, (D. C. N. Y. 1921) 277 F. 91; The Rogdai, (D. C. Cal. 1920) 278 F. 294.